

United States
Circuit Court of Appeals
For the Ninth Circuit.

Transcript of Record.
(IN TWO VOLUMES.)

FRANK L. TOBEY and RETTA M. TOBEY,
His Wife, AUGUSTA M. TOBEY and
WILLIAM L. TOBEY,
Appellants,
vs.

EDWARD C. KILBOURNE et al.,
Appellees.

VOLUME II.
(Pages 337 to 690, Inclusive.)

Upon Appeal from the United States District Court for
the District of Oregon.

Filed

JAN 14 1915

F. D. Monckton,

Clerk.

United States
Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN TWO VOLUMES.)

FRANK L. TOBEY and RETTA M. TOBEY,
His Wife, AUGUSTA M. TOBEY and
WILLIAM L. TOBEY,
Appellants,
vs.

EDWARD C. KILBOURNE et al.,
Appellees.

VOLUME II.
(Pages 337 to 690, Inclusive.)

Upon Appeal from the United States District Court for
the District of Oregon.

(Testimony of F. L. Tobey.)

per Columbia River, that they were issuing bonds, which were backed by first mortgages and sales contracts and after talking with him a short time, he claimed he didn't know all the conditions in this project and he proposed that we go to another man's office, and he took us to Mr. Hodges, for further information. Mr. Hodges office was in the Chamber of Commerce Building. Mr. Hodges, told us about the same as Mr. Humphrey, only he went into it a little more fully. I don't know that I can recall all the conversation there. He represented to us that they owned about four thousand acres at Wahluke, and they had contract for something like ten thousand acres more. He said mortgages behind the bonds were first mortgages on real estate. 125 per cent of the face value of the bonds. They had contracts to the same amount, 125 per cent of the same amount of the face value of the bonds. They got these contracts from the sale of property on the Wahluke irrigation project. I think we probably were in his office for a couple of hours. He showed us a map of the project, and I think he had some photographs there. I know he did later. I am not sure whether he had them that day or not, but I believe he did, showing work done and was being done on the ditches, photographs of a pumping plant, exterior and interior. We had several conversations with him in regard to the bonds.

We went there to see him frequently. We had a

(Testimony of F. L. Tobey.)

conversation with Mr. DeLarm, about it, after talking with Mr. Hodges. I don't know but what we went there perhaps two or three times, and he proposed sending for Mr. DeLarm, who, he said, was president. It would be impossible for me to give the dates when these various things occurred. I would say our first visit to Hodges' office, to be the last of January, or early in February 1911. Mr. Hodges sent up to Seattle, for Mr. DeLarm to come down, and we spent some time with him going over the proposition. He gave us just about the same story that the others had. He represented they had this Wahluke project, they owned some four thousand acres of land in their own name, and had contracts on something like ten thousand acres more, they had a pumping plant practically installed, and were working on the ditches at that time, had some seven or eight miles, I think, completed, he claimed. The lands they had contracts on, I understood, belonged to the Northern Pacific Railway.

We had just this one conversation with Mr. DeLarm, before the deal was consummated. He said these bonds are guaranteed by 125 per cent of the face value in first mortgages on real estate and the same amount of sales contracts. He stated the mortgages were with the trust officer George C. Hodges. I think we talked over the terms of the trade, and he made arrangements to go up to eastern Oregon; to go up to look at our farm property. We agreed upon a

(Testimony of F. L. Tobey.)

trade providing they were satisfied and their bonds stood investigation. He said he was not posted on farm property, but he had a friend in Seattle, who was familiar, and he would like to bring him along and take his judgment. The next time I saw him was at the farm with E. C. Kilbourne. I didn't go over the place with them at all myself but I saw them at the buildings; they came to the buildings shortly before noon, were looking around the place, took in all the buildings, the barns and our pumping plant, examined the stock. We were all together, Mr. DeLarm, Mr. Kilbourne and myself, and my brother. There was some talk among the four of us about the stock. Mr. Kilbourne, made a remark that we had a very nice bunch of stock, and I think in the course of the conversation, he asked in the event of a trade if the purchasing party would be allowed to select the stock to a certain number that had been agreed upon. We told him that we would reserve that privilege ourselves.

I would say they were at the house probably two hours. Most of the stock were loose in the yard at the time, they just went around thru and looked at them; went into the barns and looked over what we had worked in there, they went to the bunk houses, the men's bunk houses and looked thru there; examined the wagons, the blacksmith shop, and went on to a separate building about a quarter or three-

(Testimony of F. L. Tobey.)

eighths of a mile from the other buildings, *were* we kept the combined harvester, and looked at that.

I went from there to Olex, and came back to Portland the next morning. I saw Mr. DeLarm in Portland.

We drew up a contract for the place, an agreement. The consideration was \$120,000. in bonds. After that my brother made a trip to Seattle, to investigate the bonds. We looked them up, their record as far as we knew how. I don't know what he did in Seattle, except as he told me. I wasn't with him.

That contract wasn't carried out. We entered into another agreement with them later. Mr. DeLarm was in Portland at the time the second contract was entered into. We relied upon in entering into the contract—our own investigations, and principally to what the company had told us, our acquaintance with them; we took them to (*be*) honest reliable men and depended largely on their recommendations. I made no investigations personally, the investigations were made by my brother principally. We believed the representations made by Mr. DeLarm and Mr. Hodges. When the deeds were made out there was present Mr. DeLarm, Mr. Hodges, Mr. Brazell, and I think E. C. Kilbourne was there. They were made to E. C. Kilbourne, at the request of Mr. DeLarm. I don't think there was anything said about that until after we had agreed on the trade, and it came to

(Testimony of F. L. Tobey.)

the question of making out the papers. I can't say positively when that request to make out the deeds to E. C. Kilbourne, was made; I couldn't recollect. I knew of it when the deeds were made. I think he was in town at that time. I saw him the next day after the deeds were made; I think it was the next day; I won't be positive. The deeds after they were made were placed in escrow at the Hartman-Thompson Bank. It was for one of two reasons, I am not positive of which; it was either because there were some defects in the abstract, which Mr. Kilbourne wanted corrected, or it was pending a loan Mr. DeLarm, was to make us for \$3,000., which he wasn't prepared to turn over to us at that time. I can't tell the exact date the deeds were delivered to Mr. Kilbourne, it was something like ten days later, I think that they were out of escrow. I couldn't state as to whom they were delivered to. I don't know whether C. A. Kilbourne was in town at the time of the delivery of the deeds. There were approximately 4350 acres in the place, just a fraction of an acre less. We had been farming that place eight years.

I know the value of real estate in that neighborhood generally, I think. The value of land of that character in that neighborhood, in March 1911, was worth \$20. to \$25. an acre. We valued ours at \$25 with the equipment on the place. The extra \$1000. in the consideration of \$141,000., was part payment

(Testimony of F. L. Tobey.)

for the grain we had on hand, and the wood, groceries in the house and fuel oil and such things as that.

Mr. DeLarm, represented, I think, there was something like \$300,000. bonds outstanding at that time. We didn't employ an attorney to investigate these bonds, and never went up to Wahluke to see the plant, and never saw any of the securities. Mr. Hodges, said they were in a safe, I believe it was at the Seward Hotel, where he was stopping. I believed the representations made to us by Mr. DeLarm, and relied upon them. The state of cultivation of the place was very good at that time. In 1909, I believe was a fairly good crop. 1910 was very light. In 1909, I don't remember positively, I think our grain went some 12 or 14 bushels to the acre. In the fall of 1908, I think it was, I counted the sacks. The first season we had it. It ran, if my memory serves me right, there was something over 11,000. sacks. We generally figure about $2\frac{1}{4}$ bushels to the sack. They harvested something like 1700 acres, that year. The method of cultivation has a great deal to do with it. To produce the best crops there, the work wants to be done at the proper season, done well, and the land thoroughly cultivated to conserve the moisture. That is true of any farming community, to a certain extent, more so there, than elsewhere I think. They were just beginning to adapt that method at that time. I was on the place during the time Mr. Chandler, had it, in fact I drove a team for him a few

(Testimony of F. L. Tobey.)

days to help him out when he was short handed. The year 1908, the year I counted the sacks. He turned the ranch over to Mr. Wade, because he was pretty heavily in debt to Mr. Wade, and glad to get out of it. Mr. Wade, gave up the place, he said he had more business than he could handle. He was a merchant at Olex, and also had several farms on his hand; said he had to let some of them go, didn't have time to devote to all of them. Mr. Wade told us he didn't make expenses one year, but I think he did the other. 1909 We didn't sell anything out of the place, that was a very short year; poorest crop we ever raised. 1910 It paid us something. I don't know now how much. I can tell approximately, I would say we got some five or six thousand dollars off the place that year. We got half of the product.

Cross Examination.

(By Mr. C. E. S. WOOD.)

1908, the sacks were piled in the field, and I went to them and counted them. The next year we didn't get enough crop so that we sold anything out of it, we used it all for feed and seed purposes. We were getting half the crop in the year 1910. As near as I can remember we got some five or six thousand dollars, but I am not positive, that was our half.

Q. What induced you to rely upon the representations of Hodges and DeLarm, and at the same time send your brother over to Seattle, to make an investigation? In one breath, you say that you relied

(Testimony of F. L. Tobey.)

upon the investigations you made, and you evidently did make an investigation; in another breath, you say you relied upon the representations of these men there.

A. We relied on both our investigations and their word.

Q. You endeavored to make a thorough investigation, did you?

A. We did, to the best of our ability, we thought.

Q. You have been pretty careful business men all your lives in business?

A. As far as we knew how, I guess.

Q. What did DeLarm say when he said that he wanted the deed made out to E. C Kilbourne? Give as near as you can the words he used and the reason he gave.

A. Why he said he wanted to make the deed to Mr. E. C. Kilbourne he owed him some on some of the work installing the pumping plant for him on his irrigation project and he wanted to turn the place over in settlement.

Q. He was taking this method of making settlement.

A. Yes, sir.

Mr. Brazell, I believe drew the deeds, I didn't see them drawn. They were already prepared when we went to Mr. Hodges office. I was never in Mr. Brazell's office. The contract made in February, was made the day it bears date. I have no way of fixing

(Testimony of F. L. Tobey.)

the date, that they *cam* up to the ranch for investigation. I think my brother went to Seattle, within two or three days following that. There is no way that I can recall the very day of the month or the day of the week. I signed this first contract in Mr. Hodges' office. There were present Mr. Hodges, Mr. DeLarm, my brother and myself. I cannot recall who else was there. I couldn't tell whether it was morning or afternoon, my memory is that it was the next day after they came to look at the ranch. I think they came back to Portland, from the ranch in the afternoon, took the afternoon train out of Arlington, and I followed them the next morning. I can't say whether we executed the contract the same day that I got in from Arlington, though I think I did. I am now referring to the first contract.

The time we first talked with Mr. Sherlock, I think was in the latter part of January. I would think it was perhaps some week or ten days later when he introduced us to Mr. Humphrey, which would be early in February, and we saw Mr. Hodges, almost immediately. I don't know whether Mr. Hodges, told us he was trust officer that day or not, I couldn't say how long it was until the next time we saw him, but we saw him several times. I think the period was less than a week. The company he named that he was acting as trust officer for was Oregon & Washington Trust Company, that he styled it.

Adjourned for the day.

(Testimony of F. L. Tobey.)

Friday, May 16, 1913, 10 a. m.

Certified copy of deed from Mary A. Domay, to the Washington, Orchard Irrigation and Fruit Company, introduced marked "Plaintiffs' Exhibit 134."

F. L. TOBEY, resumed the stand.

Cross Examination Continued.

I base my estimate of the value of farming land in that region, on what the land will earn, and the price land is being sold at. I never kept any record of it, so I could not answer that intelligently, what it would earn on an average, say at seven per cent. I don't know that I can recall any sales that were made early in 1911.

Q. Do you know that soon after they took possession that the Kilbournes bought adjoining land for \$10.

A. I didn't know anything about it.

Q. It is a fact, though, that a good many of the smaller farmers sold out and moved away from that district, isn't?

A. There have been more or less for years past.

Q. Isn't this a fact, that land has to be farmed alternate years, that is, you have got to accumulate the moisture over a year?

A. That is the most successful way.

Q. And its got to be farmed the dry farming system of perpetual cultivation, and keeping a mulch of powdered soil on top to retain the moisture?

A. To make it pay the best interest.

(Testimony of F. L. Tobey.)

Q. And to do that effectively, requires considerable apparatus either in the way of stock or machinery, and the overhead charges are such that you have got to have a large quantity of land to let the half lie idle in the alternate years, and to warrant the expenditure of money in stock, and machinery, and it is necessary in order to make a good business of it, you have to have very large ranches, isn't that so?

A. Not necessarily. A man can handle the same quantity of land profitably there.

Lots of them living there on half a section, making a living.

Q. How do you know they are making a living?

A. They live.

Q. How do you know they are not in debt?

N. Nobody starved to death there yet that I know of. I don't know anybody's private affairs of course.

Redirect Examination.

(Mr. WILLIAMS.)

My brother Fred's farm contains 2800 acres I believe. When I went there I didn't have a dollar to my name. First property I gave a note to my brother Fred. We have made our *property* right there in the country, farming principally. When we traded off the place, myself and brother owed something like \$6,00. We had acquired all that property up there. I know how much my brother Ed had when he went there. I know pretty well Ed had about \$1200, I think when he started farming. Everything

(Testimony of F. L. Tobey.)

he has beyond that he has made since we started farming off his place. Fred was the same way.

Q. During the course of the years those farms are profitable?

A. They have been.

I didn't make any investigations of these bonds personally, my brother did a little. We relied principally upon the recommendation given us thru DeLarm and Hodges. We were in charge of the place ourselves. Mr. Wade had given it up at that time. We had in charge a man by the name of Jones. I don't know whether Mr. Kilbourne, talked with Mr. Jones, or not. Mr. DeLarm took an interest in the investigation of the place in a casual way, not particularly so, Mr. Kilbourne seemed to be the most directly interested. I think the bonds were in the office here in Portland, when we were there to make out the deed. My brother attended to the counting of the bonds I didn't personally. I was there at the time he counted them I think Mr. Kilbourne was there at the time, I am not positive *a* to that. When we traded the farm off, I personally had an equity in a home here in Portland, but not enough to cover this indebtedness. Trading off this farm left us worse than broke. Property here I deeded to some of my creditors in payment of some of my debts.

Recross Examination.

(Mr. C. E. S. WOOD.)

My brother Fred's land was down on Shuttler's

(Testimony of F. L. Tobey.)

flat. It is as good as any I guess. My brother Fred has never sold it. The Shuttler's flat land perhaps would bring a little more.

Q. Isn't there better crop, deeper soil, down on that flat, and more moisture?

A. No, sir.

Q. Just as deep soil on the hill land above?

A. Yes, sir, as far as I know.

Q. Just as much moisture?

A. No difference in the moisture.

Q. You said yesterday that your brother went over to Seattle and made full investigation, or made investigation, in accordance with the agreement that he was to have a chance to do that, and you relied on this investigation. Now, this morning you come in and say, well you relied a little on that but you depended principally on the statements of DeLarm and others. Have you been talking with your attorneys over night on that particular point?

A. I don't think I have.

Q. Well, you ought to know.

A. I didn't make any different statement than I made yesterday as far as I remember.

Q. Yes, you have.

A. Didn't I say yesterday that I relied on what DeLarm and the others told us, with our investigation along with our investigations?

Q. Well, the record will speak for itself. The question I am now asking is whether you have dis-

(Testimony of F. L. Tobey.)

cussed that point with your attorneys since you were on the stand yesterday.

A. I spoke of it to my brother.

Q. But not to your attorneys?

A. No, not particularly that.

Q. You have discussed the case and your testimony, have you?

A. It has been spoken of.

Q. Since you were on the stand yesterday, I mean?

A. Yes, sir.

Q. When I say spoke of it to your attorneys, I don't mean whether you opened the subject; I mean whether you discussed it at all. Did they speak to you about it? I don't care who began it.

A. There was more or less discussion of what was the evidence yesterday in various ways.

Q. Was this particular point discussed, about what you relied upon?

A. I don't know as it was.

Q. Don't know as it was?

A. May have been; might have been.

I didn't personally count the bonds at the time the bonds were exchanged for the deeds. I sat by while my brother was counting them—watched. Most assuredly I took some interest in the transaction.

Redirect Examination.

1910, we had a trade for the place practically completed. The valuation was \$120,000., cash valuation.

(Testimony of F. L. Tobey.)

It didn't go thru because the other man wasn't able to deliver his property.

Recross Examination.

That was a trade, yes, sir. Cash valuation, not any fictitious valuation.

It was admitted at this time that the bonds filed in Court are the bonds that were traded for the Tobey ranch. Later the Tobey's exchanged \$60,000 of bonds for others of smaller denominations. The coupons cut off the bonds and delivered to Mr. Woodcock, were not to be found. The number of \$5,000. original bonds were Serial Numbers 3413 to 3425, and 3490 to 3494, February bonds Numbered 866 to 895 par value \$100 each, issue as the date of February 1, 1911. These February bonds were the first issue of 7 per cent bonds and were part of the original consideration given to the Tobey's.

[Testimony of A. J. Biehl, for the Plaintiffs.]

A. J. BIEHL, being witness called on behalf of plaintiffs, first duly sworn, testified as follows:

(Questions by Mr. WOODCOCK.)

I was connected with the Columbia River Orchard Company, and other corporations, that were run by Mr. DeLarm Humphreys and others. I was secretary.

The transaction for the Tobey Brothers ranch was carried on entirely by Mr. DeLarm, I don't know very much about it, though I heard a great deal about

(Testimony of A. J. Biehl.)

it. I am acquainted with Mr. Kilbourne, E. C. Kilbourne, known as Dr. Kilbourne. The transaction was closed up sometime during the spring, I don't recall the dates. I had no conversation with Dr. Kilbourne, E. C. Kilbourne, about it, only in a general way. I went into Dr. Kilbourne's office several times. I was in there all the time, looking up matters, we were in debt to them. Dr. Kilbourne's office was in the Epler Block, in Seattle. They never discussed the matter in detail with me, because I wasn't the one who was transacting the business with them. Mr. DeLarm attended to their affairs entirely. I remember going in a number of times to adjust real estate deals of other kinds we had up as collateral to secure them on their debt. It was talked about, there was some little discussion about it. They thought it was a good thing (referring to Tobey deal). A short time before he came down, (referring to DeLarm), I went to look up some collateral down there, DeLarm wanted me to go down and attend to it, a list, and I mentioned the ranch, said we had a deal on it, or DeLarm had, and it would be a very good thing, and he said yes, he thought it would, it would clean up the debts and would make the bonds valuable we traded for the ranch. I mentioned to Dr. Kilbourne, that it would be a good thing to get the ranch if we could and Dr. Kilbourne, thought it would and I think I made the statement that it would make the very bonds valuable for which the ranch was traded.

(Testimony of A. J. Biehl.)

He wasn't particularly interested in our transactions except that he was willing to take the ranch. The work up at Wahluke was shut down until we could make an adjustment with them, pay them something on account. We were carrying out the work on the canal at that time and we were hard up, that took all the money we could raise for the canals. They were our creditors, they wouldn't continue until *the* got some money.

Cross Examination.

The conversation, was well Mr. DeLarm, was talking to Mr. Hodges, in *Portlan*, I believe about the trade.

Q. Now, you say that Mr. Kilbourne expressed a willingness to take the ranch in payment of their debt?

A. Yes, sir.

Q. Or some such settlement?

A. Very glad to get it.

Q. That must have been after Mr. Kilbourne had seen the ranch and knew what it was, wasn't it?

A. No, I think that was a little time beforem while we were just talking about getting it.

Q. He then expressed himself willing to take it before he knew what it was?

A. No, not exactly that way; that is a little too direct. Of course he wanted to see it first; there is no question about that; he wasn't going to take it until he had seen it.

(Testimony of A. J. Biehl.)

Q. You couldn't fix the date in any way?

A. No, I couldn't; I couldn't fix that time. It was, Oh, I presume a month or two weeks ahead of the time when they looked at it, but you see I wasn't carrying on the transaction and I really didn't know. I can't fix the date in my mind at all.

Q. What was the number of bonds outstanding at that time?

A. I wouldn't know without looking at the records; there were no serial numbers taken.

I didn't keep the record of the bonds, they were kept in the other end of the office entirely. The stenographer kept them and Mr. DeLarm O. K. them. We didn't sell bonds, we just traded. There were \$59,000 of bonds put out while the trust was in the hands of the Washington Trust & Savings Company. I remember I was told so. I didn't check them over. The first 7 per cent bonds were called the February 7 per cent bonds, and were not issued until February 1911. The only other outstanding bonds, before they were put out were these \$59,000. I don't know how many of the February bonds were out in March 1911, without looking right thru the records and things of that sort.

Q. Well, would you know this: That issue being put out February 25, 1911, and this transaction with the Tobey's occurring early in March, 1911, were the bonds that were paid with, the first of that issue that was issued?

(Testimony of A. J. Biehl.)

A. Must have been very close to it because we could hardly have traded many bonds in that month, within thirty days after they were issued.

Q. And you didn't sell any for cash?

A. I don't recall a single bond, never heard of a bond being sold for cash except the brokers sold for cash to each other, after they got them. This Tobey business was the largest trade we made.

Q. You say you had some sort of a vague conversation with Dr. Kilbourne to take over, or about taking over the Tobey ranch.

A. Yes, I think was something said.

MR. ERSKINE WOOD: And we are trying to fix about when that was. Did I understand you to say you thought that was before he had seen the ranch?

A. Yes, I think it was; perhaps a couple of weeks before. I don't know whether the bonds that we traded were the first of the issue. I was not the trader, but they must have been very close to the first. The conversation with Dr. Kilbourne, I think was before he had seen the ranch, perhaps a couple of weeks before.

Q. Now, wasn't there some discussion as to whether the Kilbournes would take the ranch in settlement of the work they had done, or in settlement for that work, and in consideration for their promise to go ahead and complete the job? In other words wasn't there considerable discussion as to how much they would allow on the ranch?

(Testimony of A. J. Biehl.)

A. Yes, no doubt about that; I heard of that a great deal.

Q. Wasn't that after Dr. Kilbourne had seen the ranch?

A. Yes, sir I am inclined to think that was after, that discussion was after.

Q. Wasn't that the only time you went?

A. I went down to see Dr. Kilbourne, at any time. I went down to see him about a transaction when DeLarm didn't have time. He had all the transactions with the company. DeLarm done a great deal at that time because we owed them money. We discussed it just in an informal way before that time. They heard that there was an offer on for a ranch down in Oregon, and I don't know that they specified, only as to size, a very large ranch 4500 acres or something of that sort.

Q. How did they hear that this trade was on?

A. Why, DeLarm told them, he told all his deals for two weeks in advance of making them, sometimes he made them, sometimes he didn't.

Q. Now I persist in this because the Kilbournes are very positive that the only time you ever came to their office and discussed this Tobey business at all was after the deal was practically closed, and it was simply a question of how much they would allow for the ranch; whether they would take it in full settlement and agree to go ahead and complete the job, or just how much they would allow; they are quite posi-

(Testimony of A. J. Biehl.)

tive in that, and I want to know whether you still persist.

A. I want to be positive too, you know. I don't want to make any mistake about it. While I am satisfied that—I am satisfied that I had a conversation with the doctor before he looked at the ranch. Now, what stage the deal was in at that time, I don't know.

Q. But you didn't know anything about the deal then?

A. No, I didn't know what stage the deal was in at that time.

Q. So there was nothing said about his taking it over?

A. Yes, yes, it was a very good thing.

Q. At that time?

A. No, he didn't talk to me about those things; he didn't go into as to whether he was going in or not; that was DeLarm; he was the head of the firm.

MR. C. E. S. WOOD: I would like to ask one question: This talk with Dr. Kilbourne, these talks of yours, were they in the nature of negotiations with them, and you acting for the company?

A. No.

MR. WOOD: Just chats?

A. That is all.

MR. WOOD: Just casual chats?

A. *Os*, yes, not negotiations.

(Testimony of A. J. Biehl.)

Redirect Examination.

(Mr. WOODCOCK.)

Q. I would like to ask you Mr. Biehl, whether you ever offered the Kilbournes bonds for their property?

A. Oh, yes, they couldn't consider bonds. They needed cash for their business. They were not bankable at that time.

Q. What is the fact, in your negotiations with the Kilbournes whether the value of the bonds was discussed, and whether they were willing to take the bonds or wanted something else?

A. No, outside of the fact that they couldn't use them at their bank, I don't think there was anything definite ever said.

Q. Now, in dealing with the Kilbournes, what is the fact, as to your company having to turn property and everything you could get hold of over to them to secure them in their pay? Other property outside of the Tobey ranch?

A. Well, we didn't turn everything we could get to them, they demanded security because they were pressed for money too like we were.

Q. Most of the business was done thru Dr. Kilbourne, wasn't it?

A. Yes, as I recall it, I think so; Dr. Kilbourne was the one that attended to the business.

Q. Now, what is the fact as to his taking quite an interest in his business, in your negotiations, and

(Testimony of A. J. Biehl.)

one way and another, in the way of getting land, etc.?

MR. WOOD: Pretty leading I must say, but go on.

Q. Well, I don't know how to ask it in any other way.

A. I don't quite understand; what interest he had in our business?

Q. I say what is the fact about Dr. Kilbourne being—negotiating with your company, as far as you know, in reference to securing funds, etc., to carry on the business?

A. For us for our concern?

Q. Yes.

MR. ERSKINE WOOD: You mean negotiating on behalf of his concern, as his concern's agent?

MR. WOODCOCK: Yes, sir, that is just what I am asking, yes, sir.

A. Oh, I don't—I hardly know how to answer that question. I don't think I quite understand.

Q. I will ask it in another way.

A. Yes.

Q. Did you secure other property besides the Tobey ranch?

A. Oh yes; yes we had traded for other properties.

Q. And what part did he take in it one way and another?

A. I don't recall any more that he took outside

(Testimony of A. J. Biehl.)

that he was directly interested in; if there were other properties; perhaps may have helped to negotiate a loan on a piece of property, in fact I think he did negotiate a loan; that was for his own business interest, to pay himself.

Q. What would you say as to his knowledge and familiarity with the conditions of the company, and how it was doing its business at about the time the Tobey deal was made?

A. Well, he would be pretty well posted; of course we were hard pressed; that is while the deal was being made; that is for cash, actual cash, we were getting in properties.

Q. Did they know your financial condition at the time the Tobey deal was made—at that time?

A. Oh, undoubtedly, they knew we were hard up.

MR. ERSKINE WOOD: I think we have admitted in our answer, if we haven't we will admit it now, that the Kilbournes shut down in 1910, after doing \$43,000. worth of work, because they couldn't get any money out of DeLarm and Biehl. We admit that.

Recross Examination.

(C. E. S. WOOD.)

Q. The Kilbournes weren't in your company, any of them, were they?

A. No.

Q. As stockholder or director?

(Testimony of A. J. Biehl.)

A. No.

Q. They were familiar with all Mr. DeLarm's negotiations and inside dealings?

A. No one was I have found out now.

Q. The Kilbournes weren't?

A. No.

Q. They were simply the constructing engineers, and you had got in debt to them?

A. That is true.

[Testimony of Jay Bowerman, for the Plaintiffs.]

JAY BOWERMAN, a witness called on behalf of plaintiffs being first duly sworn testified as follows:

(Questions by Mr. WILLIAMS.)

I reside in Portland. Occupation, attorney. Resided previous to coming to Portland, at Condon, Gilliam County, am familiar in a general way only with the land around Shuttler's flat near Olex. Am not intimately acquainted with them. *on* Own some land in that neighborhood, and have an interest in some. I was attorney for a school fund there for about twelve years. I loaned money all that time. I loaned quite a lot of money in there, that is some, not such a large amount, probably 12 or 15 loans I should think in that neighborhood.

I know the Tobey Brothers ranch in a general way. I think I loaned some money on a piece that belonged to Henry Knott, at one time. I think that was a part

(Testimony of Jay Bowerman.)

of this place. About three-quarters of a section, as I recall it.

Good wheat land in there in my opinion would be worth at that time \$20. or \$25. an acre. I mean by that first class land. There is good, a medium, and then land that is hardly worth anything. In that country north of Rock Creek, some of it is very light, and some of it is first class. I don't think the Tobey ranch is as good a piece, but I consider the Tobey ranch worth \$20. an acre, cash value. Some of that land down there is kept in good shape, and some allowed to grow up with weeds. You take land kept in good shape and the weeds properly cultivated it is worth three to five dollars an acre more than improperly, because you lose that income, and it takes time and money to keep it in shape. My understanding of the Tobey ranch is it was well farmed; that is what I heard. I don't claim an intimate knowledge of the Tobey ranch. I just know something about it, by going by it there.

Cross Examination.

Q. You would like to believe that land up there was worth \$50. an acre if you could, wouldn't you?

A. Yes, I wish it was, yes I wish it was Judge.

[Testimony of C. E. Sox, for the Plaintiffs.]

C. E. SOX, witness called on behalf of plaintiffs. being first duly sworn testified as follows:

(Questions by Mr. WILLIAMS.)

I reside at Albany, am an attorney; have been practicing law nearly fifteen years.

Know George C. Hodges, had occasion to visit his office with reference to the bonds and securities behind them of the Columbia River Orchard Company. It was during the month of April, 1911. Some of my clients were solicited to exchange timber land in Lane and Lincoln counties, I believe for the bonds, of the Columbia River Orchard Company, and at their request I came to Portland, and called on Mr. Hodges at his office and discussed with him these bonds and the securities behind them. I asked to see the securities on my first visit. I didn't see them, Mr. Hodges, he either said they were in Seattle, or were locked up in a safe deposit vault where he couldn't get at them at that time, but later at their request I again came to Portland in June 1911. It was during the Rose Show, and at that time I was shown some water mortgage and also a trust agreement, under which the Oregon & Washington Company held the securities. Water mortgages was all that I saw. They told me they had contracts for land and water rights, but I didn't see any of these. They told me at that time there was \$425,000. bonds outstanding; that was in April. They told me at that

(Testimony of C. E. Sox.)

time that they owned six sections of land, that the odd sections in that project belonged to the Northern Pacific Railroad Company, and that the rest were railroad lands or government lands that were subject to location under the Desert Land Act.

I was shown a statement of their assets and liabilities at that time, of which I made a copy. Witness produces copy. Those items I discussed with Mr. Hodges and Mr. DeLarm also. I met Mr. DeLarm, in the office in June. That statement of assets and liabilities is a correct copy. I discussed those items with Mr. Hodges at that time, asking him what the various items represented, and he assured me that that was a fair statement of the condition of the company, at that time.

April 1911, discussed with him the bonds outstanding. It is mentioned in the memorandum at the foot of the statement that there were \$425,000 bonds outstanding. I put that memorandum upon it. That memorandum was made during the month of April, sometime between the 20th and 28th day of April.

Statement introduced marked "Plaintiffs' Exhibit 134 $\frac{1}{2}$."

The number of the bonds were then given in evidence as follows: The numbers are: \$100.00 bonds 2001 and 2010 inclusive, making \$1000.00; 3427, \$5000.00. No. 2011 to 2020, \$100. each \$1000.00. Bonds No. 3401 to 3426, \$5000.00 each, \$130,000. with the \$3000 of \$100.00 bonds makes the \$140,000.00.

Plaintiffs rest.

[**Testimony of E. C. Kilbourne, for the
Defendants.**]

E. C. KILBOURNE, one of the defendants, called in his own behalf, being first duly sworn, testified as follows:

(Questions by Mr. C. E. S. WOOD.)

I am one of the defendants in this case. My relation to co-defendant C. A. Kilbourne, quite distantly related, perhaps a fifth or sixth cousin.

At the present time I am farmer in Gilliam County, near Olex. The Tobey lands is a part of the land I am farming.

In 1910, my business was engineer and machinery merchant. I was vice president and general manager of the Kilbourne & Clarke Company. That was a corporation under the laws of Washington. Business of constructing power, light, ventilating and irrigating plants, and the sale of electrical machinery and allied supplies. I had made a study of soils, irrigation land opportunities. I had charge of that department particularly in our company. Have given attention to lands in relation to orchards, suitable soil, suitable location etc. Had property of this kind of my own fifteen miles north of Wenatchee on the Columbia River, at Arondo, in the Wenatchee Reclamation district. 60 acres of land on what is called Arondo flat lying about 125 of 183 feet above the Columbia River of which 24 acres of it was in orchard, which we planted ourselves.

(Testimony of E. C. Kilbourne.)

First came in connection with DeLarm and his orchard company in January 1910. I first met him in his office in the Henry Building, in Seattle, Washington.

During my absence on one of the engineering trips one of our engineers had secured a contract from DeLarm and Biehl for the construction of this pumping plant. The contract had been drafted in our office, by our chief engineer, Mr. Simpson, but had not been executed. I went ahead with the draft and drew up the contract, and went up there to the office of DeLarm & Biehl, in the Henry Building, to have it executed by the officers of the Columbia River Orchard Company—Orchards Company, whatever it is.

Contract was produced and witness asked to state what he did under it at that time. Mr. C. A. Kilbourne, was absent in the east, he was president and treasurer. He had charge of the financial end of the business and the accounting department. I had charge of the operating and engineering end of the business. Upon his return,—after the signing of the contract which was on January 18, 1910, our chief engineer Mr. Simpson, sent one of our assistants Mr. Collins, over on the property at Wahluke, to make the surveys necessary for the pumping station and upon Mr. C. A. Kilbourne's arrival from the east, which occurred a few days later we both went to the office of DeLarm & Biehl, and asked for a statement of their financial resources, that we might

(Testimony of E. C. Kilbourne.)

know upon what to depend. This was right along after the 18th of January, within a week, in 1910. The contract refers to the pumping plant, not the ditches. At that meeting Mr. DeLarm, went over verbally his resources, which he said at that time consisted of desert land water mortgages, chiefly; a tract of land, 40 acres, known as the townsite of Wahluke; and 320 acre piece of school land, which they had under contract to purchase from the State. I think at that time, that was all they said of land that they owned, but that they had these water mortgages, and he stated in a day or so he would prepare a written statement, which he would furnish, which he did later to C. A. Kilbourne. I haven't got that statement, I don't know what became of it Mr. Kilbourne had it in his pocket until it was pretty nearly worn out. I don't know what he did with it. We proceeded immediately with the drafting of plans, and from that on to the construction of the plant. We were, I should say a month or six weeks before we really got into the work, and then the Columbia River began to rise, unusually early. The usual rise occurs in June or July, this occurred in April, and we were obliged to rush work night and day, and we had to go up to one of the farmers in the neighborhood and get 2000 sacks to fill with sand in order to make cofferdams to keep the water out. We had two pumps to keep the water out of the excavations, but that wasn't sufficient, and we sent to Cohasset,

(Testimony of E. C. Kilbourne.)

to another irrigation plant, we were sonstructing about 25 miles up the river and hauled down a big 25 Horse power gasoline engine and seven inch pump to add to the other two pumps in order to keep the water out. With three pumps we were able to keep the water down and go ahead with the work, but we had to keep the work going night and day in order to keep the water back. We practically completed this work in July of 1910. We kept men employed there doing little things, one thing and another, and shut down completely in September, except for a watchman and a man to look after matters down there, and also to keep our lien rights open.

Contract of January 18, 1910, with the Kilbourne & Clarke Company, identified, introduced in evidence as Defendants' Exhibit "F".

Paper dated May 18, 1910, between the same companies, Columbia River Orchard Company and Kilbourne Clarke Company, and identified as an amendment to the original contract.

WITNESS: This is an amendment of the original contract changing the estimated price from \$40,000. to \$50,000. and changing the terms of our compensation from 10% to a fixed price or \$10,000., or not less than 25%. The reason for this supplemental contract was the unforeseen difficulties, due principally to the rise in the Columbia River, these difficulties made the cost run up enormously, more than estimated; also the condition of the gravel was such

(Testimony of E. C. Kilbourne.)

that it cost four times as much as would ordinarily be expected to handle anything of that kind. It was just like mush when wet, and had to pour in cement to hold it.

Supplemental contract introduced, Defendants' Exhibit "G."

Witness shown a paper dated February 17, 1910, between Puget Sound Bridge and Dredging Company and the Kilbourne-Clarke Company—

WITNESS: This is a contract that we as engineers for the Columbia River Orchards Company made with the Puget Sound Bridge and Dredging Company, who were just finishing up a bridge across the Columbia River, near Pasco, for the North Coast Railroad Company. They had a large amount of machinery and plant just becoming idle, and we were anxious to start work in a hurry, therefore, our chief engineer, who was a personal friend of Mr. Dyer, the manager of the Bridge & Dredging Company, made arrangements with them to take their machinery from down the river about 50 miles, and put it on the ground immediately and go ahead and take the contract for excavation and pump building. That is the contract with them.

Introduced, Defendants Exhibit "H".

Q. Just, state, as an ultimate result how much you were left owing the Puget Sound Bridge & Dredging Company?

A. We were owing them at one time a little bit

(Testimony of E. C. Kilbourne.)

under \$25,000. It has since been reduced to \$19,000. then it ran up again with attorneys fees etc., to \$22,000. two or three hundred. on January 26, 1912. In March and April, 1911, we started work again and were finishing off a little piece of the intake from the river to the plant. That was one of the most expensive pieces of work there was in the whole proposition. It was under the level of the Columbia River at all times. It was a canal big enough, for a man to walk upright in. I have forgotten the size.

That was only a part of it. There was installing all of the pipes, suction pipes, and big discharge pipes, big cast-iron pipes, some of those 36 or 40 inches in diameter; the installation of all the machinery, the overhead crane that handled the machinery, the discharge pipe, which is a 4 foot pipe running from the pumping plant up about 700 feet to the ditch. This was a wood stave pipe. That is practically all of it. The additional cost was a little under \$17,000. This was after we came to an agreement with DeLarm to take the Tobey ranch. We had shut down work for lack of funds. We called in September 1910. They were *they* owing us then \$43,000 plus. We were owing the Bridge & Dredging Company about \$24,000.

Witness was asked to state in detail the first connection *thru* he had through DeLarm or in any way with the Tobey land.

A. Mr. DeLarm, came into my office in the Epler

(Testimony of E. C. Kilbourne.)

building, in the latter part of February, 1911, stating that he had another irrigation scheme, and that this project was a fine one in that it would be a gravity proposition, and was in a fine district, and said that he would like to, have me go down and look it over, and see if it was a good, feasible project, from an engineering point of view, and also particularly as to whether I thought that soil and land would be suitable for fruit raising, as he knew of no fruit being raised in that vicinity. I asked him when he wanted to go, and I am under the impression that he wanted me to start that very night. Well I said. "What do you want to take on this other proposition for, until you complete the one that you are now under—have now under way?" Well, he said, "This is a better one in many prospects". He says, "down at the Wahluke project, we are paying a hundred dollars an acre for all land, and then have to pump water on it besides". He says, "This we can get all the land in the vicinity we want for under \$25. an acre." He says, "I have about five thousand acres now that I have contracted the purchase for, and it appeals to me as a splendid proposition, because we can get all the land we need there for one quarter of what we have to pay down at Wahluke".

Q. Let me interrupt you there to call your attention to the fact, and ask if you are sure of it. He

(Testimony of E. C. Kilbourne.)

said he had some four or five thousand acres already contracted, did he?

A. Yes, sir.

Q. Go on.

A. The result was that I hurriedly closed up all the affairs—oh, I said to him, “I will go down and take a look at it, if you will pay all the expenses” which he readily agreed to do. I hurriedly closed up all the affairs I had and took the train that night.

Q. With DeLarm?

A. With DeLarm, at about 11 o'clock, and he bought the tickets and everything, and we came down, and the next morning when we got to Portland, he took me to the Seward Hotel, and we had breakfast there. During the day we met—in fact I was in his—in the office of the Puget Sound Realty Company, in the Chamber of Commerce Building when he called up Mr. Tobey, by phone, and made arrangements with him to go up on the evening train to see the property. I remember his discussing over the phone with him whether we would take the seven o'clock train, or a later train, and they finally concluded to take the later train, which we did, and we met Mr. Tobey at the station, and he introduced me to Mr. Tobey, saying “Mr. Tobey, this is Dr. Kilbourne, our engineer on our Wahluke project. I am taking him along, as he is an expert on the irrigation question, and also an expert on land and soil. I would like to have him see the ranch.” We

(Testimony of E. C. Kilbourne.)

took the train and I immediately went to bed to get a little sleep, and got off at between one and two o'clock at Arlington. I went to bed again there at the hotel, leaving a call not to awaken me till just before breakfast time. Told them I could dress in fifteen minutes. We took breakfast, and soon after breakfast, Mr. Tobey, had secured a team, and we got into the team, Mr. Tobey, Mr. DeLarm and myself, and drove to the ranch. I remember of driving, turning off the road, and driving in through a fence that was taken down, and Mr. Tobey, calling attention to a high mountain on the ranch, which he called Mount Pelee. We drove in that way. We drove over, pretty well over the west end, west half of the ranch, and arrived at the farm house, between one and two, just after the men had gotten through dinner, and they prepared a meal for us of which I ate only about crackers, the only thing I saw fit to eat there. Then we sat around there about two hours, to let the horses rest and to eat; had been a pretty hard drive, twenty, probably thirty miles all together, including what we drove around the ranch, from Arlington. We, oh, I should judge, along about two o'clock, or half past, we hooked up again, and drove over the *eady* part of the ranch, and it was there, the first time I saw rock, any rock in the soil, and I called Mr. Tobey's attention to it, and I says, "These are the first rocks I have seen. It looks like elegant soil. You are not

(Testimony of E. C. Kilbourne.)

troubled with rocks here. Up in our Wenatchee land that we had of our own, there are places where we could walk across rocks without touching, walk across a whole acre of ground without touching ground, so many rocks we had to take out. Here I don't see rocks at all, until the middle of the afternoon" After we had driven over the east end of the ranch, we drove on the south side of the ranch, past the combine shed, to which we stepped, and I peeked inside. I don't think we looked about more than two minutes at the combine, which he called attention to. Said was a big fine combine, a 24 foot cut. I didn't learn until afterwards it had been discarded, and hadn't been used for four years. But while we were at—waiting to get dinner, or just after dinner, we looked over the stock. He had most of the mules in the yard adjoining the barn. I looked at the caterpillar engine, which was standing in the yard. It was near the blacksmith shop. Looked through the bunk-house and took particular attention of the pump and well, which is in the corner of the bunk-house, and made all sorts of inquiries of Mr. Tobey, the elder Mr. Tobey. I had considerable difficulty in getting at the real facts. I learned from him a number of things which I put down on a slip of paper, which I have. He said. 4350 acres—

(Two questions omitted)

I made that memorandum that day. 3,000 acres

(Testimony of E. C. Kilbourne.)

can be irrigated. I asked him particularly if he had—the survey had been made which would tell how much of that land could be brought under the proposed ditch from Rock creek. He says 4,000 acres under cultivation; 2,000 in wheat, 1910, average seventeen bushels per acre, produced 15,000 sacks, and I asked him how many bushels in the sack. He said $21\frac{1}{4}$ bushels; I multiplied that and found 34,000 bushels in round numbers; took a thousand sacks, or 2250 bushels for seed and feed~~d~~ rented last year, 1910, received for own use 7,000 sacks, 15,000 bushels, and got seventy eight cents a bushel, which is \$11,700. Operating expenses last year \$6,000| 1911, have 1400 acres seeded, will seed about 600 more. In 13 years only had one poor crop. Nine horses, twenty three mules, Fifteen teams—these later memorandums were made afterwards. Tobey's statement to me. E. C. K.

I got these facts from Mr. Tobey, that day. Memorandum introduced in evidence, Defendants Exhibit "I", over objection as immaterial.

A. It was a cold, blustering day, the wind was blowing hard from the southwest, and when we started out after lunch, it began to little flurries of snow. By the time we got on the road, on the south side of the ranch, got along on that side toward Olex, the wind was blowing like everything, and the snow was coming down so that we couldn't talk any more, and it was awfully disagreeable, and I came pretty

(Testimony of E. C. Kilbourne.)

near freezing. I wasn't prepared for such weather. And we drove along, I guess, with no conversation whatever until we got down to Olex where Mr. Tobey told me that we could find a man who would give us some information about the irrigation end of it. He didn't know a great deal about that; only had talked with the people who were interested in it.

MR. ERSKINE WOOD: Let me interrupt to ask, is Olex on Rock Creek?

A. Yes, down several hundred feet below the level of this ranch; down in a deep canyon. We drove down in there, arriving a little before five or six o'clock in the evening, just a little before dusk, anyhow, and I want to say I got one of the finest dinners there I ever ate in my life, and I enjoyed it because I hadn't had much *by* crackers for lunch, and there I met Mr. Randall, and he gave me what information he could about this irrigation, he being president of the Rock Creek Association, but said that Mr. Martin, his son-in-law could give me more information, because he was with the engineers when they made the survey for the dam, and run the line for the ditch. We couldn't find Mr. Martin. He wasn't there that day, but Mr. Randall showed us photographs of the dam site. It is a natural site in the canyon being vertical walls, and gave such information as he could about the flow of the creek, which was very indefinite. We went out, and took a look at the creek, and its width and depth. He said some-

(Testimony of E. C. Kilbourne.)

times it ran full and overflowed the banks, and came up to the house, but for several weeks, and sometimes months, in the spring, that creek ran bank full.

Upon my return to Seattle, I looked up the Government reports in my library, and all I could find on the flow of Rock Creek was during the year 1905, which they said, in the Government's report, was a dry season. Mr. Randall said if the waste of the creek were confined in a dam and held, there would be enough to *irrigat* 15,000 acres. And upon learning all the facts I could, I reported to Mr. DeLarm that it looked like a very favorable proposition. The only question was the question of water, and the cost of that dam, and a canal to bring the water, to the land, which is about 16 miles.

Q. Then from Olex you went to the railroad, or did you stop off any at Olex?

A. We stayed all night there, went the next morning to Arlington, and took the train from there to Portland.

Q. What date would that be?

A. Well, I can't fix the date exactly, except this. I have a distinct remembrance of going with Mr. Anderson to the Northwest Trust Company, and trying to get him to pay some \$800. on a note the day before I left, and he said he couldn't do it, but would do it on the next day, and I therefore dictated a letter of instructions to the Northwest Trust Company on the 21st of February, so I am quite sure that I left

(Testimony of E. C. Kilbourne.)

that night for Portland, and on the next day for Olex, and came back the next day after that, which is the 23rd. We arrived at Portland at six o'clock in the evening, and I took the eleven o'clock train for Seattle

Q. Then was it true, or could it have been possible, that you were present at the drawing of the first contract between DeLarm and the Tobey's?

A. I was not there.

Q. Were you in Portland at all?

A. No, sir.

Q. Now, Doctor, up to this time, were you acting exclusively as an adviser and expert and engineer for DeLarm?

A. Yes, sir.

Q. Had you at this time any idea you would ever become interested in this land yourself?

A. No. No more than perhaps build the plant for them.

Q. Yes, but I mean, interested as owner or part owner of the land?

A. No, sir.

Q. Had Mr. DeLarm suggested that to you at this time?

A. No, sir: Never suggested the idea at all.

Q. Now then, after your return to Seattle, you may state what interviews you had with DeLarm and what was their purport and time and date, as nearly as you can give it?

(Testimony of E. C. Kilbourne.)

A. On the sixth of March, Mr. DeLarm came into the office and asked if I would consider taking the Tobey ranch, which I had examined, and going ahead—in payment for our bill, and going ahead with the plant, and finishing it, complete it. The result of the *engotiations*, which lasted over two or three days were briefly as follows: He said the ranch was worth \$120,000. that that is what they contracted to pay for it. This is the first time that I knew what he had contracted to pay for it; that is we would finish the plant, he was willing to allow us a big profit. He says “I am willing to allow you \$20,00. or \$25,000. You take the ranch for \$75,000.—or we discussed the value of it then, the real value. He said, it cost \$120,000 and that is what it is worth. Well, I said, “I don’t consider it any such value”. Well, he reduced it finally to \$100,000. and proposed that we take the plant and call it \$75,000. for our services, plant, etc., and he retain one fourth interest in the ranch. He also said at that time, why, he could go down there and borrow—well, I said, “The Kilbourne & Clarke Company haven’t the capital. They have your plant and half a dozen on their hands unpaid for, and they are out of funds, and out of business”. Well, he said, “Can’t you and C. A. do it—Mr. C. A. Kilbourne?” Well, I said, possibly we can, and we will consider it.” The upshot of it was, that Mr. C. A. Kilbourne and myself, who had personally, with our own personal property secured

(Testimony of E. C. Kilbourne.)

the Puget Sound Bridge and Dredging Company for their—the amount of their indebtedness, putting up our own property; and the Kilbourne & Clarke Company we felt morally bound to stand behind and pay their debts; that we were in it for that amount, and we better go ahead with the contract, provided we could see our way to get sufficient funds to do it. Mr. DeLarm said could raise—we thought we ought to have \$32,500. to do that, in cash; with that we could carry things along all right. He said “Well you can borrow that amount on it all right.” The upshot of it was, that on the 8th of March, we finally agreed to take the ranch over as security for the claim of the Kilbourne Clarke Company, and the expense we would be to in finishing the plant, which we calculated would be \$16,000., but we would not accept it in payment. That we would then endeavor to find out what its real value was, and we would come—if we could come to an agreement upon the price and what it was worth, that we would settle that question. The result was that he agreed then to have it deeded to me, E. C. Kilbourne, to be held as security, and then he told me that the contract called for the delivery of deeds on the 15th of March and I agreed to be there in the office of the Puget Sound Realty Company here in Portland, on the morning of the 15th. I took the late train from Seattle to Portland on the night of the 14th, and arrived here on the morning of the 15th. After getting my break-

(Testimony of E. C. Kilbourne.)

fast I went up to the office of the Puget Sound Realty Company in the Chamber of Commerce Building; found nobody there; called there three or four times before anybody came in; finally the stenographer, a young lady, came in and *opened* the office, and I went in and sat down, read the morning paper, waiting for somebody else. Mr. Humphrey was the first man to come in, and I introduced myself to him, or he did to me, and I learned then that he was the attorney for DeLarm and the Columbia River Orchards Company, and I asked him then if he had examined the abstract and attended to those matters for Mr. DeLarm, and he said that he had, and that he had the abstracts right on his desk, and he opened up his desk and showed them. I asked him if I could look over them. He said, certainly, he said, "but I have examined them already myself" I said, "Have you examined them for Mr. DeLarm? Are you satisfied that the title is all right?" He said, "Yes; there are two pieces of land. One there are some heirs that are pretty badly mixed up, and another they acquired by a quitclaim deed". But, he said, "They have already run ten years or over, and the Tobeyes have had possession all this time without any contest, and while it is not a merchantable title on those two pieces," he says, "I think it is safe, and you will never be disturbed in your possession of them". I said, "If that is the case, all right. I won't employ any—that ought to be satisfactory". I said,

(Testimony of E. C. Kilbourne.)

“Did you know that the land was to be deeded to me,” and he said yes. I said, “Where are the deeds?” He said, “They were over in Mr. Brazell’s office.” I asked him if he could tell me where it was, and he did, gave me a description and I went over to an old-fashioned building, and found an old fashioned set of law offices, but Mr. Brazell was not present.

This was the first time I had ever met Mr. Brazell, first time I had ever been in his office. I remember handing him my card and telling him who I was. I had waited there quite a while; I think twenty minutes, before he came in, and I asked him—introduced myself, told him who I was, and what I wanted, and he said he had the deeds. And I asked if I could check them over. I had my form of abstracts, description of lands, lists of lands, and figured up the acreage, and found it to be 4349 and a fraction acres, and I asked him if I could compare deeds with these descriptions, and he said yes, and we sat down, and went over it, and I found an error in one of them, and also found he had made a great many deeds more than necessary, and asked if he couldn’t consolidate them into three or four deeds. He said yes, and sat down there, and made out deeds, consolidated some of these pieces and got them all right, satisfactory to me, all checked up and checked out, and I said “You will be over there, will you, when the Tobey’s come in to sign the deeds”? And he said, “Yes, if they will send for me, I will be all ready”. So I went back to

(Testimony of E. C. Kilbourne.)

the Office of The Puget Sound Realty Company, and found Mr. Hodges and Mr. DeLarm there.

MR. BRYSON: And who?

A. Mr. Hodges and Mr. DeLarm. And during the course of the day the Tobey's came in. Mr. William Tobey, and Mr. Frank Tobey; a little later Mr. E. O. Tobey, and Mrs. Frank Tobey and Mrs. Augusta Tobey, the mother of the Tobey brothers; and Mr. DeLarm and Mr. Hodges took them into Mr. Hodges' room and closed the door. I was in the reception room in which this opened; Mr. Hodges' room opened out. I sat there for awhile, and then finally went into Mr. Humphrey's room, which is another private room, where I could get daylight, and read the daily papers. the *Oregonian*. I was there quite a long while.

And Mr. Brazell came in, went through the reception room into the room where the Tobey's and Mr. DeLarm were closeted, and I am under the impression that he wasn't there very long, and went out, and then Mr.—Mr. Hodges came out. I saw him go out, and when he came back, I was sitting out in the waiting room again, and he went through the room, and I think he undid a bundle of deeds right on the desk, or table, rather in this waiting room, and took the deeds—I don't mean deeds, I mean bonds—and took the bonds into the room where Mr. DeLarm and the Tobey's were, and closed the door. After awhile they opened the door, and invited me in, and intro-

(Testimony of E. C. Kilbourne.)

duced me to Mr. E. O. Tobey, whom I had never met before, and to Mrs. Frank Tobey, and Mrs. Augusta Tobey; and I had most of conversation with the old lady, whom I found a very charming lady.

MR. WOODCOCK: W. L. instead of E. O., you mean.

A. No, I meant E. O.

MR. WOODCOCK: Were three of them there?

A. Yes, sir; and the bonds, I think, were laying in a pile, covered up on the table, or face down. And the deeds were there, and Mr. DeLarm asked me to look over the deeds, and see if the signatures were all right and satisfactory. I looked them all over and saw that they were all signed properly and properly acknowledged by a notary. They Mr. DeLarm said that he—I started to take the deeds; and the bill of sale was also made; they were all made in my name, the deeds and the bill of sale; I *stated* to take them, and Mr. DeLarm, said, “Well, the transaction isn’t quite complete. We will have to take the deeds and the bonds, and put them down in the bank on the ground floor of this building Hartman & Thompson, and as soon as the escrow is complete, why you can have the deeds, and the bonds go to the Tobey’s.

Q. Did they tell you what the terms of the escrow were?

A. Well, he said that they had agreed to furnish the Tobey’s with a loan.

(Testimony of E. C. Kilbourne.)

Q. Of cash?

A. Cash, and they hadn't the money that day, but it was coming down to them though, the next day, from Seattle, and they would be able to take it up in a day or two, and just as soon as that money was to the credit of the Tobeys in the Hartman Thompson Bank, why, the bonds would be theirs, and the deeds would be mine. Well, I said, I acquiesced. I left there, and immediately went to the Balfour Guthrie Company to see about a loan. I talked with Mr. McKenzie. He said that he thought—he knew the ranch pretty well, and he said he thought they could loan \$25,000. Well, I wanted \$32,500. Well, he said, "It is quite possible we might loan \$30,000, but my feeling is now—"he was very cautious and careful—"that we will not loan more than \$25,000." But he says, "We have our Mr. Pattullo right up close to there, and I am in communication with him over the long distance phone every day, and I will hear from him any time now, and I will have him go and see the ranch, and make an examination.

MR. WOODCOCK: Of course, your Honor, we have allowed a whole lot of this hearsay to go in. I don't think it is competent.

COURT: Don't state the details.

Well, upon his report I will let you know exactly what we will loan. The next day I went in two or three times but he hadn't heard from his Mr. Pattullo, and later in the day of the 16th, I think along in

(Testimony of E. C. Kilbourne.)

the afternoon, he had his conversation over the phone with Mr. Pattullo, and obtained a report on the ranch of which he read me, a copy, and he said that the written report would be forwarded in the mails. The conclusion was that he would only loan \$20,000. I tried to get more, but finally accepted it and signed the application for the loan of \$20,000. I signed the application for the loan and left that night for Seattle. Before doing so I instructed Mr. DeLarm or Mr. Hodges, to notify the Hartman Thompson bank, that when that transaction, the escrow was completed, to send the deeds to Balfour Guthrie, Mr. McKenzie.

Court adjourned until 2 P. M.

Friday, May 15, 1913, 2 P. M.

At this time, this case was dismissed as to the defendants Clapp and Lutz, under stipulation.

E. C. KILBOURNE, resumes the stand.

(Questions by Mr. C. E. S. WOOD.)

As I stated before, on the 8th of March, when we agreed to accept the ranch in payment and go ahead and complete the plant. We didn't agree upon any terms for which we would allow for the ranch, but on the 24th of March, we came to an agreement, with Mr. DeLarm, regarding what we would do. It wasn't reduced to writing.

E. C. and C. A. Kilbourne agreed to assume and pay the indebtedness of the Columbia River Orchard Company, to Kilbourne & Clarke Company, amount-

(Testimony of E. C. Kilbourne.)

ing to about \$43,000., agreed to complete the pumping plant which was estimated then to cost \$16,000. We agreed further to put in an additional unit, doubling the capacity of the present plant, or the plant that was previously agreed upon, to be installed at any time upon—I think if I remember correctly, six months' notice. On their part, Mr. DeLarm agreed for the Columbia River Orchard Company, that they would pay the Puget Sound Bridge & Dredging Company, \$7500., for which amount we agreed to secure the release of the lien of the Puget Sound Bridge & Dredging Company then upon the plant, and to pay the difference between that and what was owing them ourselves. And Mr. DeLarm, rather the company, agreed further to assume and pay the indebtedness, owing to the Moran Company, amounting to about \$2250. at that time. And I personally agreed to deed back to the Columbia River Orchard Company two pieces of property in Tacoma, which had been given to me as security on the Kilbourne & Clarke Company contract, one piece of which had been mortgaged by a second mortgage to the Moran Company to secure their claim.

Q. Was this agreement carried out? Did you deed back the Tacoma property?

A. No sir; we didn't do that. We carried out the part of the agreement to complete the plant except install that additional unit, and that little bit of the intake.

(Testimony of E. C. Kilbourne.)

Q. Why didn't you deed back the Tacoma property?

A. Because the Columbia River Orchard Company did not pay off the Moran claim.

(Questions omitted)

We completed the existing unit of the pumping plant in June, 1911, which cost a little under \$17,000!

Q. Where did you get that money?

A. We made a loan, on the ranch we got from the Tobey brothers of \$20,000., from Balfour Guthrie Company, or rather Mr. Burns of that company, and secured finally about \$19,500 of that, and that was the money we used.

Q. You may state when this agreement in which you were to complete these matters, and take the property in payment, the date?

A. The 24th of March, 1911.

Q. And you say it was never put into writing?

A. Only partly. I turned immediately to our stenographer, and dictated that letter to blank, that is in evidence here. The other people put it in.

Q. Now this property was deed by you to Mr. C. A. Kilbourne?

A. Yes, sir. When I went to get my wife to sign the mortgage She was perfectly willing to sign the mortgage, but she objected to signing the notes. That is an understanding we have had for a great many years, that she should sign no notes. I telephoned to Mr. McKenzie, asking if it would be sat-

(Testimony of E. C. Kilbourne.)

isfactory for both of us to sign the mortgage, my wife as well as myself, but for me only to sign the notes. He said no, he must have both on the notes, and Mr. C. A. Kilbourne volunteered to take the property in his name and sign the mortgage and notes both and there were other reasons why the deed should go to him anyway.

A. Well, Mr. C. A. Kilbourne, had advanced the Kilbourne & Clarke Company, to carry on during these trying times, about \$72,000|. and this ranch was turned over, and deeded to his name, as part payment on that indebtedness.

Q. Now, I wish you would tell the reason why the second unit was not installed and completed as per agreement just spoken of.

A. In the fall of 1911, September, Mr. DeLarm, came to me and said that he was very anxious to get some money to pay for the right of way and ditch, and the land there, to the Northern *Pacific*; and also the Puget Sound Bridge & Dredging Company had been putting off from month to month the foreclosure of their lien, and he was anxious to do something to get that lien released, as he was under contract to do it, but he didn't have any means to do it, ready cash. And they wouldn't accept anything but cash. He therefore proposed that we put a mortgage, a second mortgage on the ranch, of \$17,500., of which \$7500 would go to the Puget Sound Bridge & Dredging Company, and clear off

(Testimony of E. C. Kilbourne.)

the lien, and \$10,000 to go to him; and as a consideration for that \$10,000. that would go to him, he agreed to release us from the installation of that future unit, and the completion of the intake of the little—which we figured out would cost about a thousand dollars; possibly fifteen hundred.

Q. Now, state how this was carried out, this supplemental release agreement.

A. Well, he said in conversation that he could get the money; he had a party that he thought —

Q. If you would give the mortgage?

A. If we would give the mortgage. Well, our reason for giving the mortgage was that we owed the Puget Sound Bridge & Dredging Company, that is, owed them and we had to pay at that time some \$20,000. We had paid it down to \$20,000. then, or nineteen thousand something, and they were threatening suit, and taking judgment against the Kilbourne & Clarke Company; and so we consented to giving the mortgage, and he brought over a Mr. J. Alexander Wakefield to our office. And without going into the details of that conversation, what Mr. Wakefield said, the result was that Mr. C. A. Kilbourne gave a mortgage for \$17,000. \$17,500., payable to Mr. Wakefield.

Q. And this mortgage is what is known here in this record as the Clapp mortgage?

A. Yes.

Q. In what way?

(Testimony of E. C. Kilbourne.)

A. That mortgage was assigned from Wakefield to Clapp.

Q. I just want you to identify it. I want you to state the transaction now.

A. Mr. Wakefield, said that it was Senator Clapp's policy not to pay any mortgage until it had been filed of record, and he had notice from his agent that it was filed. That is exactly the same method and statement that Mr. McKenzie made when we gave him the mortgage and notes to Mr. Burns, or what we call the Balfour Guthrie mortgage. Mr. McKenzie said he wouldn't pay any money over until the mortgage was on record at Condon, and he had gotten word back that it was recorded. Mr. Kilbourne gave the mortgage and notes to Mr. Wakefield, and we understood—I don't know from my own knowledge only what was told me—that he turned it over to Senator Clapp or Mr. Lutz. Mr. Lutz took it to Condon and had it recorded, and sent word back and then we tried to get the money from Mr. Wakefield, and I will say that I never saw a better staller in my life.

Q. Never saw what?

A. A better staller in my life than Mr. Wakefield. We never could get anything; never got a cent from him. Of course we got the release from Mr. DeLarm and the Columbia River Orchards for the \$10,000., which were credited to the Columbia River Orchard Company, but the one very chief reasons

(Testimony of E. C. Kilbourne.)

for giving the mortgage, to secure the \$7500. to give to the Puget Sound Bridge & Dredging Company, was to get longer time, never materialized.

Q. All you ever got out of that note and mortgage was a \$10,000. credit, by which you were released from completing the second unit—

A. Yes, sir.

Q. (Continuing) And the intake. I show you Plaintiff's Exhibit 58, and ask you if that is the letter you refer to, which is a settlement between you and the Orchards Company and DeLarm, to which you have just referred?

A. Yes, that covers part of the settlement.

Q. Which part?

A. The part which we were to do. Complete the plant, and that the Kilbourne & Clarke Company had been paid. I will state right here that that is not exactly as I dictated it the first time to our stenographer. I addressed it to the Columbia River Orchards Company, but at Mr. DeLarm's request, I changed it to the Washington Orchard Irrigation and Fruit Company. That is the first time that I knew that company was in existence.

Q. Now, before we leave this branch of the subject, I will ask you whether Mr. DeLarm, in all your negotiations, ever tendered you bonds in payment, or asked you to take them?

A. If he did, it was never considered. I don't remember that he ever did. He may possibly, but—

(Testimony of E. C. Kilbourne.)

Q. But you don't remember?

A. No.

Q. Why wouldn't you consider it?

A. Well, it is a fixed policy of our company not to do it. and the compabt was short of money and couldn't do it; that is the Kilbourne Clarke Company. They have to have money to carry on transactions, and Mr. Kilbourne was advancing money all the time to carry on these, and to continue other irrigating

Q. Did you know anything about the value of the bonds, or make any investigation?

A. I made no investigation except the investigation we made right on the start, which could, perhaps, be a basis of their bonds.

Q. That is the property, the physical property?

A. Yes, and the water mortgage.

Q. But when you and they both got hard up, and you were pressing them for money, did you make any investigation of the value of the bonds?

A. No, never considered taking bonds.

Q. What was the reason that you preferred to take the property?

A. Because we could raise—we thought when we first took it, we thought we could raise \$30,000; we could raise money, immediate cash. I have an original letter from Mr. Plummer, to me and Mr. Cooper's letter, to which he didn't testify. (handing letters.)

Q. The letter I am after is asking if it wouldn't

(Testimony of E. C. Kilbourne.)

be possible to get the title to the pumping site, and also signed by Kilbourne & Clarke Company, engineers. Do you remember writing a letter which has been read into the record here, to the Northern Pacific Land Agent, to the effect—asking if they couldn't get the title to the pumping site.

A. Yes, sir.

Q. This is the one we just showed you; we haven't got it; the one we are talking about Mr. Plummer took home. Do you remember writing such a letter?

A. Yes.

Q. In what capacity did you write that letter?

A. As engineers for the Columbia River Orchards Company.

Q. Who were about to construct the pumping plant?

A. Yes, were constructing.

Q. What was your interest in the matter?

A. It is my business to do just such matters connected with engineering and the construction of the plant, and one of the principal reasons why I was interested in getting the property on which the plant was situated was so that we would have our—the plant that we were constructing on the properties that was in the name of the Columbia River Orchards Company, so if we should ever have to put a lien on it it would be a good lien. One of the first jobs we did was to make a survey of the land and find out

(Testimony of E. C. Kilbourne.)

where it was situated and furnish that very information to the Columbia River Orchards Company. There is a little matter there that might be of interest.

Q. I show you a letter headed Northern Pacific Railway Company, dated July 13, 1910, and addressed to E. C. Kilbourne, Esq., signed Thomas Cooper, Land Commissioner, and I will ask you whether that is a reply to the letter we have been discussing?

A. It was a reply that was finally—it was a result of that letter; the letter that you were discussing was written to Mr. Plummer. Mr. Plummer said he couldn't settle the matter until Mr. Cooper came out. Mr. Cooper *Cooper* came out and I saw him personally and that is his letter.

Q. And prior to that you had received a reply from Mr. Plummer which I now hand to you dated June 9, 1910, had you?

A. Yes, sir.

Q. So that these two letters constitute the reply to your letter, the first from Mr. Plummer, and the second from Mr. Cooper.

A. Yes, sir.

Letter of June 9th, 1910, from Mr. Plummer, identified introduced Defendants' Exhibit "J".

One dated July 13, 1910, from Mr. Cooper, Defendants' Exhibit "K".

The conversation had with Mr. Plummer at the

(Testimony of E. C. Kilbourne.)

time when I wrote the letter reminding him—previous to writing him the letter to remind him to talk with Mr. Cooper when he came out, was practically to this effect: I wanted to know if we could get for the Columbia River Orchard Company, for which we were acting engineers, a deed to the canal right of way and to the pumping site, and he said that they had it arranged with the Columbia River Orchard Company—he went and pulled down his file and—agreed to give them that same thing, and then I took it upon myself, without any instructions from Mr. DeLarm, at this phase of the matter, to ask him how about securing the lands below the ditch. *Id* did it with a great deal of hesitation because of previous interviews on lands over on Moses Lake, which I applied for for another party. He said all these lands had been withdrawn from sale, and he explained that the conditions were changing and the prices were fixed on the basis of agricultural lands, and now were changing, and gave me to understand they were raising their price, but the *the* thing hadn't been settled yet.

Q. What was your interest in the right of way for the canal?

A. I was acting as engineer for the Columbia River Orchards Company.

Q. What was your interest in the agricultural land?

A. Well, I had no interest, but you see - - -

(Testimony of E. C. Kilbourne.)

I had another conversation with Mr. Plummer in 1911 after we had entered into this contract to complete the plant by E. C. and C. A. Kilbourne. It was in April, and his letter to me was dated April 29th, in which he stated that for \$50. an acre they would convey the lands to the Columbia River Orchards Company; well, it didn't apply directly to me it applied directly to the Columbia River Orchards Company but said "Replying to inquiry of Mr. E. C. Kilbourne regarding sale of pump house site and right of way for Wahluke Ditch, I beg to say that we will renew our offer to sell a right of way, 50 feet wide for canal, and pump house site of three acres at the rate of \$50.00 per acre upon the condition that the canal be constructed and pumping plant installed ready to furnish water within one year from date of sale. Sale will be made for cash, but deed will contain clause providing for reversion of property to the grantor in case its use for irrigation purposes is abandoned. Before sale is made, we should have a map showing the correct location of the ditch and pumping station, also the area of the rights of way across the subdivision owned by the company. This proposition will be held open for your acceptance for sixty days from this date. Yours truly, G. H. Plummer, Western Land Agent."

A. That letter is all in evidence. What I want to know is how did you get a copy of that letter addressed to the Orchards Company?

(Testimony of E. C. Kilbourne.)

A. They brought it to me.

Q. They furnished it?

A. Yes.

MR. BRYSON: What is the date of that letter, please?

April 29, 1911.

Q. Now, were those the only conversations you had with Mr. Plummer, relating to this matter?

A. I had just a short conversation with Mr. Plummer, when he introduced me to Mr. Cooper, the land agent, at Seattle, in July 1910. These were all the conversations in the matter?

Q. Do you remember a chat with Mr. Edwards in the bank, to the effect that you were glad that a local company was taking hold of this trust?

A. Yes, sir. It was recalled by his evidence. It had slipped my memory, that is, it hadn't occurred to me until he spoke of it the other day.

Q. You remember it now?

A. Yes, sir.

Q. About what time would say it was?

A. Pretty early in the inception of the work.

Q. But after you had taken the contract?

A. Yes, after we had taken the contract.

Q. And what is your recollection of what the conversation was?

A. They have a bank there called the Seattle Title & Trust Company—Seattle Trust & Title Company—I have forgotten which comes first, and the back

(Testimony of E. C. Kilbourne.)

end of the bank is a large room that widens out into an "L" shaped room, and back there they have their abstract department. I had been back in the abstract department regarding an abstract I was having made by them, and going out I saw Mr. Edwards, sitting near the entrance at the back there, in the manager's—I think on the desk it said Entrance, Manager. I had known Mr. Edwards; he had just gone in there. I had known him as a promoter all that time, in a private capacity, and I congratulated him upon his election to this office, and I don't know how the conversation happened to drift on—I think I asked him what business the bank was going to pursue, what line of business, because they were a trust company and an abstract company and a bank, all three, and I was personally acquainted with Mr. Wiley who was the financial backer, and Mr. F. W. Baker, of the Seattle Hardware Company, another financial backer, and Mr. Black, still another one, all friends of mine. I said "You have got a pretty strong institution here, it looks to me" and I said "What is going to be the nature of your business?" and then he told me that they proposed to take up trusts where they were good projects, and to handle bonds and underwrite bonds. I congratulated him upon the fact that some Seattle institution was going to help out in the building up of the state by *bloating* bonds and securing the money

(Testimony of E. C. Kilbourne.)

to develop the state. I was very much *interest* in irrigation myself.

Q. It was a mere casual conversation?

A. Yes, sir.

Q. When did you first learn how much DeLarn had paid in bonds for the Tobey Ranch, and state what your conversations with him were in regard to the purchase of the ranch, when you thought he was going to be the owner, before you had agreed to take it over?

A. I think that either going over on the train or in some of his conversation that he had said he was going to pay \$25.00 an acre, or \$120,000, or had—that is what he had paid for it or was going to pay for it. I got it in my head somewhere that that was the amount, but I didn't pay any attention to that, the price or the consideration at all, because it wasn't what I was going for. I was an engineer and my thoughts didn't run in that direction, and it had nothing to do with the cost, the job that I was on.

Q. Then when did you learn that he had paid \$140,000?

A. On the 16th a day or two after, I think it was the next day after the transaction had occurred in the office on the 15th when the deeds were passed. I learned of it in this way; I asked him for a copy of that contract of March 4th; I thought it was March 1st, I got it in my head, and it was for the

(Testimony of E. C. Kilbourne.)

reason that he said that under the terms here of that contract, he had assumed all the bills on the ranch from the first of March, as he put it the cleavage date. Well, I said "I want a copy of that contract to know what has to be done in regard to the ranch and the Tobeys, and also to get a further description of the property, to see if it corresponded with the deed for the personal property or bill of sale."

And he didn't—he said, "Well, I haven't got anything but the original and I will have a copy made and furnish you, which he did, and I think he gave it to me the next day, the 16th. Then when he gave it to me, I said you paid \$140,000." I said "I thought it was \$120,00." and he didn't seem to answer, and I says "Why, Mr. DeLarm, that is altogether too much." I had found out then from Balfour Guthrie that they considered it worth—what their report was on it for a loan and I said "Why Mr. DeLarm, that is too much to pay; it ain't worth it." Well, he said, "It may not be; I don't think it is, but" he says "it does this, it puts the water in the ditch, and pays for that plant, and it will make our project a success, and that is what I am after; I am willing to make any sacrifice.

Q. Do you remember any conversation, I think it was on the street; it may have been in your office, with Mr. Heaton, the attorney that testified here?

A. That was in our office.

Q. And what date—what time was that?

(Testimony of E. C. Kilbourne.)

A. Well, I could tell exactly if I could look on the cash book of Kilbourne, Clarke & Company, when I paid him the ten dollars, but I presume his testimony is correct, because I notice by my expense account that I got back in Seattle on the—I think it was the 6th of April, and he testified it was about the 6th.

He came into the office and said, or asked, he said “You are putting in the power plant for the Columbia River Orchards Company?” I said yes. He said, “Have you been paid for it?” I said yes. And I said, “Not only for that, but, I says, “We have been paid for an additional unit that is to go in some time later.” And he said, “Well, do you know that company—there is a receiver asked for?” And I said no, “That is news to me.” He said, “That is a fact.” Well, I says, “On what ground.” “Well, because,” he says, “they haven’t paid the interest on their bonds.” I said “That is all news to me.” I wondered at it. I thought the company now was in good shape, and would go right ahead, and be all right. and a success, and then he said, “I notice by the records in the case here that you are a creditor of the concern, that recently went into the hands of a receiver and assignee, and that they owe you quite a little bill here.” Well, he said, “I have gotten the accounts, in handling the cases for about ten or twelve of the different creditors, and I would like to get yours to consolidate with the others. I have

(Testimony of E. C. Kilbourne.)

means by which I think I can collect your bill pretty nearly in full, if not quite in full." I said, "Do you feel sure that you can collect it?" He said, "Yes." Well, we had a regular attorney, a Mr. Corey, who was attending to all such accounts, but I said, "If you feel sure that you can collect it, I just as lieve let you do it." He said, "Well, I shall want \$10, as a retainer to pay expenses, and from that I will pay the expenses we will incur, your share, and I think I can collect the money for you." So I turned to the bookkeeper, and asked him to make a check for the ten dollars and give it to him.

Q. Now, you said—

A. And I immediately, after he left the office, I immediately called up Mr. DeLarm, and asked him to explain and tell why and what there was to it. Mr. DeLarm said he would come down and see me, which he did immediately, and I said, "What is there to this? Have they asked for a receiver?" He said yes. I said "What for?" He said, "Nothing but a blackmailing case." He says, "He has a few hundred dollars of bonds, and that the interest on these bonds, while it is past due, it has been tendered him and he has refused to accept the interest. He is holding out for the whole sum." He says, "He just buys up these bonds, buys them up in order to bring a case in court, in order to bleed us; that is all."

Q. Now, you said that you thought that now the enterprise would be a success. What did you mean

(Testimony of E. C. Kilbourne.)

by "now?" What day or transaction do you refer to as making a success?

A. The contract with E. C. and C. A. Kilbourne to complete the plant, so that they could put the water in the ditch. Everything hinged in putting water in the ditch.

Q. Did you ever in any way have anything to do with the affairs of DeLarm's companies, or know anything about them?

A. No, sir.

Q. As far as you did know anything about them. what was your opinion as to the feasibility of the concern after you had given them the pumping plant complete, to put the water in the ditch?

A. It was perfectly feasible, was all the time; had great confidence in the proposition; have today.

I paid no attention to the bond issue whatever, except on the early start, the very first proposition, the question of bonds came up thru the conversation in which he (referring to DeLarm) said that the bonds of the company would be \$300,000. were practically sold in the East. That is when Mr. Kilbourne and myself were investigating their resources.

(Several questions omitted.)

I was in Mr. Brazell's office only once and that was on the morning of the 15th. Mr. Tobey, wasn't with me. It is my direct memory that I was in a hurry to get back, I was very busy at that time, and hated to give up the time I did to the trip, and I

(Testimony of E. C. Kilbourne.)

rushed right back, and I remember I went that same night. I had no direct interest or concern what contracts Mr. DeLarm made with the Tobeys. There was no reason why I should wait over in Portland. I thought his contract was all ready made. He told me he had a contract for the land before I left Seattle.

This DeLarm project was not the only one in which we were engaged. I had a half dozen under way at the same time for other people.

Why, we had under way during that time, and just before, and through and during that time, one for the Cohassett Irrigation Company, just above the Milwaukie Road on the Columbia River; we had made a preliminary survey and estimate on the power plant at Priest Rapids, for the Mattewa Power & Irrigation Company, and that was up, under consideration, at that time; made a survey and estimate for Joe Hoskins over near Moses Lake, and we had under construction one for the Aronda Water & Land Company, another for the Entiat Irrigation Association; that is near the Columbia River above Wenatchee, and just about the same time one for George D. Brown on the Chelan Falls, on the Columbia River, one for the Long View Orchard Company, on the Columbia just above Wenatchee, and several others. We were constructing furnishing material; some of them we were only consulting engineers on, but we furnished machinery for all of them, too.

(Testimony of E. C. Kilbourne.)

Q. They were all taking money too?

A. I should say so.

Q. Now, when you started in on this contract you said you made some investigations, and that you found—and then at that time, as I think, examined some water mortgages or water contracts, or something like that.

A. When Mr. DeLarm, submitted these water mortgages as assets, I enquired first of his attorney as to the validity of them, whether a man has a right to mortgage property that he didn't have a deed for, that is still in the government for a lot of these were just simply desert land filings, and he said that they were all right, that he had written to the Secretary of the Interior, and expected a letter any time. I went over to Ballinger, Battle & Ronald, and asked them their opinion, and they said that a man having a desert filing had a perfect right to mortgage it and the mortgage was good.

Q. You have said you didn't turn back the Tacoma property, because they never fulfilled their part of the agreement. Did you have any securities which you did surrender when you got the Tobey ranch?

A. We had some water mortgages which we surrendered them, some. Some were given to William T. DeGraaf, and signed for by him for the Columbia River Orchard Company, and some I think, were given to Mr. DeLarm, personally.

Q. Did the financial success and validity of this

(Testimony of E. C. Kilbourne.)

project, from your examination and knowledge of it depend on the possession of the Northern Pacific land?

A. No, sir. I felt confident that they could get it at any time they got their ditch completed, and showed good faith. The ownership of that land would not at any time have been necessary to the success of the undertaking. I don't think it depended on securing that land. It would have been a feasible project; we could have sold water to everyone below the ditch and everyone below a proposed ditch above; that many outside of the Northern Pacific seven or eight thousand acres. They were willing to pay for water \$100. an acre, which was about the going price.

Witness, referring to the 15th of March, when he was in Mr. Brazell's office, said I know I was in Seattle, on the night of the 14th, from a letter I ordered my stenographer after she had left to write for me. and she wrote it on the 15th and signed it for me. I am sure from my notation on that letter I came down here only on the 15th.

Q. Why were the Puget Sound Bridge & Dredging Company, permitted to foreclose their lien?

A. We had agreed with Mr. DeLarm, that we would secure the release of that lien if he would pay in \$7500., but he never paid the \$7500.

Q. That should have come from the Clapp mortgage?

A. Yes, sir. Mr. DeLarm had a written from our

(Testimony of E. C. Kilbourne.)

company to that effect. It has already lapsed, but we would be very glad if they would pay the \$7500. with the thousand dollars attorneys fees that accrued afterwards and expenses and interest from that date to this. We have so expressed to Mr. Anderson, who is reorganizing the concern.

Cross Examination.

(Questions by Mr. WILLIAMS.)

Mr. Kilbourne, you testified that in the agreement with Mr. DeLarm about the 24th of March, 1911, you settled on the consideration for the Tobey land as the \$43,000. that the Columbia Orchard Company owed you. Is that correct?

A. No, you have that a little bit twisted. That was only a part.

Q. I understand; but that was a part of the consideration, that \$43,000?

A. No. This was E. C. Kilbourne and C. A. Kilbourne. The agreement on the 24th of March, and we agreed to pay off the Kilbourne & Clarke claim of \$43,000.

Q. Now, then, in addition to that, you say you agreed to do additional work?

A. Yes, sir.

Q. For \$16,000. estimated value?

A. Yes, sir, and still more.

Q. Then the second unit?

A. Yes, sir.

Q. At how much?

(Testimony of E. C. Kilbourne.)

A. \$10,000.

Q. Now, you say that DeLarm was to pay \$7500. on the Bridge & Dredging Company account?

A. Yes, sir.

Q. And the Moran account how much?

A. \$2250. We, however, had security which was to be deeded back to him.

Q. Now, what did you figure as the total amount that you paid DeLarm for the ranch?

A. We don't figure it in any particular amount.

Q. Well, you have figured that up, haven't you?

A. Oh I think so, but I haven't figured any particular amount. It was those things. Was money across, back and forth.

Q. That would be \$43,000. and \$16,000. and \$10,000?

A. How much those were added to.

Q. \$69,000?

A. Take off \$7500.00.

Q. Take off \$7500.00?

A. No, I don't know as you need take that off; just leave it on.

Q. What?

A. No, that don't come off really.

Q. Does it go on or off now? I want to get a fair understanding of that?

A. I don't care what you do with it.

Q. How is that?

(Testimony of E. C. Kilbourne.)

A. It really wouldn't effect us; it wouldn't effect the question at all.

Q. Now, is that \$69,000 with \$7500 in addition, of \$69,000 less that?

A. \$69,000 is the gross amount.

Q. That is the gross amount that you agreed with Mr. DeLarm on?

A. We didn't do it in figures; we said we would take the ranch and do so and so, and he would do so and so, and we didn't reduce it to figures at all; the consideration wasn't in dollars; he wasn't paying us in dollars; he was paying us in a ranch, and you could call it \$140,000 as Mr. Tobey did once, or \$100,000 as he did once, or \$75,000 or \$80,000 as he did once.

COURT: Counsel wants to know how much the ranch cost you; how much you allowed DeLarm for the ranch.

A. Practically those figures, Judge.

COURT: \$69,000.

A. Yes, sir.

Q. Now, at that time you say you estimated the amount of work to be done on the pumping plant to complete it at \$16,000?

A. Yes, sir.

(Colloquy between Court and Counsel.)

Q. You estimated it at that time at \$16,000. and you figured this \$43,000 and \$10,000 for the addition-

(Testimony of E. C. Kilbourne.)

al unit; that made \$69,000. Now, was this \$7500 to come out of that or in addition to it?

A. Mr. DeLarm was to pay that, and I was to turn back this Tacoma security which he estimated was worth about \$15,000; that is another element of value there.

Q. How is that?

A. I say the Tacoma property makes another element in the situation; there are two pieces of property there that he considered worth \$15,000.

COURT: Those are the ones put as security for the dredging?

A. No, no, not put up as security; still in my name now.

COURT: I say put up to you as security?

A. Yes.

Q. These pieces of property were put up as security for this \$43,000 under your contract with them?

A. Yes.

Q. And what did you say you did with that?

A. Still in my name now.

Q. Now one of these is the Reinmouth property, is it?

A. Yes.

Q. And the other one?

A. Called the Billings property.

Q. Now, for what reason are you holding the Billings property at this time?

A. Security for this Moran claim and the \$7500

(Testimony of E. C. Kilbourne.)

that they haven't the Columbia River Orchard Company haven't paid the Dredging Company.

Q. Now, then in the adjustment, Dr. Kilbourne, I believe you said that this \$17,500 mortgage was given for the purpose of, paying the \$10,000 for the release of the additional unit, and to pay the Puget Sound Bridge and Dredging Company for the release of their lien?

A. So that we might secure that money to do those two things, yes.

Q. Now, if DeLarm agreed to pay that money to the Puget Sound Bridge & Dredging Company to have them release the lien, why were you paying it?

A. Because Mr. DeLarm didn't have the cash and the Puget Sound Bridge & Dredging Company were holding the Kilbourne Clark Co.

Q. Now why, if at the same time DeLarm owed you \$7500 to go to the Puget Sound Bridge & Dredging Company—why did you pay him \$10,000?

A. To be released from installing that other pumping plant; we had gone into the farming business and out of the contracting business, and so as to have no installation contracts on hand.

Q. I see, but I don't quite catch your idea there; wouldn't that make DeLarm indebted to you in the further sum of \$7500 if you paid his indebtedness in that amount?

A. Not any more so than he was indebted. I don't see that it would make him in debt any more;

(Testimony of E. C. Kilbourne.)

he would be indebted to us instead of the Puget Sound Bridge & Dredging Company; that is all.

Q. When you gave that Mortgage, who did you deliver it to? Who did C. A. Kilbourne deliver it to?

A. Mr. Wakefield.

Q. Were you present at that time?

A. Yes.

Q. And you were interested in the proceeds of that mortgage personally?

A. Certainly to the extent that we were both interested in the whole matter, Mr. C. A. Kilbourne and myself.

Q. How did it come, being interested in the mortgage and the proceeds of it to that extent, that you didn't pay any more attention to what became of the proceeds than you seem to have done?

A. Perhaps you don't know how much; perhaps it don't seem as much as it really was; hasn't been any seeming around here. If you had been on the ground, you would think differently.

Q. Well, I am asking you why you didn't pay more attention to the place where the proceeds went to than you did. It appears in the evidence here that the \$7500 never reached the Puget Sound Bridge & Dredging Company at all.

A. Well, to clear up from your mind any seeming appearances, I will state that we haunted that man day and night and we employed an attorney to

(Testimony of E. C. Kilbourne.)

collect the money and to prosecute him in any way and every way that they saw fit, and Mr. McClure of McClure & McClure has done everything we could, and if you can collect money out of J. Alexander Wakefield, I will give you all you can get.

Q. Well, you seem to have had confidence enough in him to entrust him with that mortgage.

A. Certainly I had confidence in him; didn't know anything to the contrary; the greatest surprise of my life when it turned out the way it did.

Q. How did it come when you didn't know that the mortgage had been discounted five thousand dollars until this case was commenced?

A. I didn't say so; I knew that in the bankruptcy proceedings in Seattle.

Q. Was that the first time you knew it?

A. No, I think I discovered it before that. No I think I discovered it soon after—we were trying to collect the money from Wakefield.

Witness was handed a statement dated September 22, 1910, showing indebtedness of the Columbia River Orchard Company to the Kilbourne Clarke Company, engineers, identified by witness introduced Plaintiffs' Exhibit 135.

Q. Now, the statement, Dr. Kilbourne, shows on July 15th a credit for cash by Hawkins of \$1334.00; just explain.

A. Mr. DeLarm brought to us a mortgage which was turned in as payment on account, and Mr. Haw-

(Testimony of E. C. Kilbourne.)

kins was the man who paid off the mortgage and gave us a check for it. The next item, by cash, July 16th, by Sam Archer \$825.00, is the same way only Mr. Archer paid it.

Q. That was another mortgage?

A. Yes.

Q. Now, were these mortgages made to Mr. DeLarm or to Mr. Biehl, or to DeLarm and Biehl, or how *ere* they made?

A. No; no, I think they were mortgages that they had acquired. A client of Mr. Hawkins, and a client of his paid the mortgage although he gave us the check.

Q. From whom did you get the mortgages?

A. From Mr. DeLarm.

Q. They were some he had traded for?

A. Yes, sir.

Q. Now, in this account there are a number of items of invoices of the Puget Sound Bridge & Dredging Company and work done by them. Are those accounts for which the Puget Sound Bridge & Dredging Company's account was made up?

A. Yes.

Q. Then the \$24,000 or such matter that was due to the Puget Sound Bridge & Dredging Company is wholly included in this \$43,000?

A. I think so, yes; they didn't work any after that time.

(Testimony of E. C. Kilbourne.)

Q. Now, was there two or three—there are three items, I believe in this, of the Moran Company?

A. Yes.

Q. Does that include the Moran account about which you testified that DeLarm was to pay?

A. Yes; I don't know that it includes it all. It may; I presume it does.

Q. Now, what payments were made to the Puget Sound Bridge & Dredging Company on their account?

A. By whom?

Q. By you?

A. We paid them about \$5,000.

Q. Where did you obtain the money from to pay them?

A. C. A. Kilbourne, advanced \$2500, at one time, and I think \$2500. of it was from this ranch, the mortgage on that ranch.

Q. You didn't pay them any money then, that you got from DeLarm and Biehl?

A. No.

Q. Were there any other business transactions between you and the Puget Sound Bridge & Dredging Company than this one?

MR. WOOD: Just a moment, I am not clear myself about the purport of this cross examination, but I want to object to any questions going into amount of consideration, the bill doesn't allege anything of the kind. It alleges no consideration passed direct-

(Testimony of E. C. Kilbourne.)

ly from these people to the Tobey boys. It isn't pretended it did. We took it as if it had passed thru Mr. DeLarm's hands. He furnished the consideration.

COURT: I suppose the purpose of this cross examination is to show just what these people did pay for the land as it may bear upon their knowledge of this alleged fraud. I am not clear about this testimony myself.

Q. You said that at the time of this adjustment, DeLarm, owed the Kilbourne & Clarke Company \$43,000. and at the same time they owed the Dredging Company a larger amount.

A. No, we owed the Dredging Company, and they owed the Dredging Company, only because they owed us \$43,000.

COURT: The \$43,000. that DeLarm owed the Kilbourne Clarke Company, including the Dredging Company?

A. Yes, sir. We were personally liable, the Kilbourne Clarke Company was to all these concerns.

MR. WOOD: In order that it may be clear, the Puget Sound Bridge & Dredging Company, was a sub-contractor under them. The Moran account was in the same condition, sub-contractors, and they owed the debt.

Q. And that account of the Puget Sound Bridge & Dredging Company is the same one for which

(Testimony of E. C. Kilbourne.)

COURT: That was after the supplemental agreement of May 10th?

A. Yes, sir.

Q. Did you send the Columbia River Orchards Company any statements after that one of the 22nd of September?

A. I think not.

Q. That was the last statement you sent them?

A. I believe so. There were some items of expense after that time, but they were not very large.

Letter of February 8th, 1910, signed by Mr. Kilbourne identified, introduced Plaintiffs' Exhibit 137.

Receipt for Reinmouth property dated September 20 1910, identified, introduced in evidence, as plaintiffs exhibit 138.

Q. How many mortgages was it that you obtained from Mr. DeLarm?

A. Three I think, I ain't sure.

Q. Two of them were mentioned in this statement?

A. Yes.

Q. And what was the other one?

A. One later that Mr. Anderson had something to do with. We got out of the latter mortgage, I think, \$800., which was credited to the Columbia River Orchard Company.

Q. Then that should still further reduce the amount of \$43,000. should it not?

A. Yes.

(Testimony of E. C. Kilbourne.)

That amount doesn't appear on the statement; it was after the \$43,000. item. At one time I had \$152,000. face value of these water mortgages, at another time \$88,000. I don't think we surrendered any at the time we took the Reinmouth property.

Witness was handed receipt for two water mortgages, signed by Mr. Biehl, identified, marked "Plaintiffs' Exhibit 139.

Q. How did you come to surrender these two mortgages of Frank Clymer and William E. Stickels at that time?

A. We had earned considerable money previous to this time and had this property turned over to us. Previous to the date of that September, statement, we had been paid \$4,000, thru these mortgages and other means.

Q. Then this statement of September 22, 1910, why was not the total credited upon it?

A. Because it had been credited before. They paid us the total of \$4,000. Just when it was credited I don't know because I don't keep the books, and didn't keep the books. Not all of it is shown there (referring to statement) because some of it was made afterwards.

Q. Now, why at that time did you surrender these two mortgages?

A. We had plenty more and they asked for them. After considerable cross questioning as to where the other payments came from besides those shown

(Testimony of E. C. Kilbourne.)

on statement and what they were, witness said:

I am very clear in my mind that there was \$4,000. paid that was the total amount ever received from them.

Witness handed letter dated June 8th, 1911, identified.

Q. Now in the letter that you signed, dated June 8, 1911, you say there is a copy of a letter enclosed from Mr. C. A. Kilbourne, that Mr. C. A. Kilbourne wrote. Examine the copy and state whether or not that is the one that you enclosed in that letter.

A. I don't see that it says so.

Q. "Mr. C. A. Kilbourne wrote such a letter in your office, dictating it to your stenographer, and she sent a copy of the letter to me. I am somewhat doubtful of the wisdom of my writing on top of the letter from Mr. Kilbourne, copy of which we enclose." Now examine the copy and see if that is the one you enclosed.

A. I don't remember, too long ago. I presume likely.

Q. Well, examine and see.

A. I didn't write the letter.

Q. Well, you enclosed the copy in the letter you wrote.

A. Well, I couldn't identify the copy.

Q. Just examine the copy carefully and see.

A. I couldn't identify it.

Q. Well, did you read the copy when you sent it?

(Testimony of E. C. Kilbourne.)

A. I presume I did, I don't know.

Q. Just read that over, and state whether or not that is a copy of a letter that Mr. C. A. Kilbourne wrote?

A. Well, I don't know. If it had been one I wrote. I could tell from the language, even if my signature was not there. But for another man, I couldn't. I paid little or no attention to it.

Q. Do you deny the copy there is the copy of one that he wrote?

A. No, I don't deny that the moon was made of green cheese either.

MR. WILLIAMS: We offer in evidence the first two, and ask that the third one be marked for identification.

E. C. Kilbourne letter 6|8|11 marked "Plaintiffs' Exhibit 140."

Statement enclosed marked "Plaintiffs' Exhibit 141."

Letter enclosed marked "Plaintiffs' Exhibit 142 for iden."

Assignment of a lot of water mortgages identified by witness introduced in evidence as "Plaintiffs' Exhibit 143." Dated April 30, 1910.

About that time, the time of the Tobey deal I think, we surrendered some of the water mortgages. We surrendered some that we had previous to that date. We at one time had \$152,000. Then for awhile we had \$88,000. At about the time or soon after the To-

(Testimony of E. C. Kilbourne.)

bey deal was consummated we surrendered all we had.

Q. This exhibit 141, bears no date, can you tell when you assigned these mortgages back to the Columbia River Orchard Company?

A. No, sometime not a great while after the 27th of March.

Q. You are satisfied that you transferred these back to the Columbia River Orchard Company, after the 27th of March.

A. I don't know it might have been earlier than that even.

Q. Now isn't it a fact that they were all surrendered prior to the first day of February, 1911, that is those that are mentioned in this exhibit 141?

A. Yes some of them I think we did surrender before. We had 152 at one time and then we surrendered a part, and then we surrendered a part so we only, had \$88,000.

Q. This amounts to just 88,000, are these the 88,000 that you had left?

A. I don't know, I presume so.

Q. They were not transferred back on account of the Tobey deal?

A. Not necessarily, no. We were protected by a lien then, and some of those mortgages had run out at that time. Some of those mortgages expired in May 1910, some of the first mortgages got. I am not sure whether it was May 1910 or May 1911. It didn't

(Testimony of E. C. Kilbourne.)

worry me about their running out, I knew we could always renew them. The parties would jump at the chance to renew them, if they could see the water in the ditches. They were more anxious to give the mortgages than anybody was to take them.

The Reinmouth property was located at Taccma, and also another piece, Billings property.

Q. Did you receive any other property as security?

A. Yes. A lot that came through Mr. Morrison in Burke's Second Addition to Seattle, over near Mr. Baker Park.

Witness handed receipt dated September 21, 1910, signed Kilbourne Clarke Company, by witness and was asked if it was the receipt for the property just mentioned.

A. This is not the same property. I think I held it (referring to the property in receipt) for a short time. I never used it turned it back very quickly.

Receipt introduced marked "Plaintiffs' Exhibit 144."

Q. Why didn't you retain the title to the property in this last receipt, Exhibit 144?

A. If I remember correctly, it was that there was a mortgage against it which amounted to about as much as the value of the property, for I have investigated the value of the property. It is in an outlying addition across Lake Washington.

Q. In the receipt the deed is from Bertram H.

(Testimony of E. C. Kilbourne.)

Taylor and George C. Hodges, to blank. Did you mean by that that the name of the grantee was blank in the deed?

A. Yes, sir.

Q. Who filled in the name of the grantee afterwards?

A. I don't know, I turned it back to them, I don't know what became of it after this.

They brought in other property, that they offered to us. I don't know that they brought in any other deeds.

Q. Did you have some dealing with a man by the name of Ezra?

A. I don't remember Ezra, one of the old prophets. There is a man whose name began with E. I think that had to do with that Green Lake property. It don't sound like Ezra. I think his name was Espey, something like that.

Being asked about the property turned over to the Puget Sound Bridge and Dredging Company, answered, I turned over personally a three-quarter interest in 160 acres of land on the ridge between Seattle and Tacoma, west of Auburn.

Witness handed a letter written by him to C. M. Glover, identified, introduced, Plaintiffs' Exhibit 145.

MR. WOOD: I object to that. We never will get to the end of this.

COURT: What do you want to show?

(Testimony of E. C. Kilbourne.)

MR. WILLIAMS: I hold his letter in answer to that, your Honor, which suggests that he trade his land to Hodges for seven per cent twenty year bonds, the same kind of bonds that the Tobey Brothers traded their ranch for, showing his connection directly with trades for these bonds.

COURT: That is written two months after the trade; after he admits he knew that bonds had been traded. Put that in the record if you want to. The only thing the Court can draw from that is that at the time he thought the bonds were good.

MR. WOOD: I think I will withdraw my objection. We would rather explain those things.

We suspended work on the plant up there in September 1910. That was the last work, except we employed a watchman there and did a little work after that, not to amount to much though. We recommenced in 1911, about the 20th of March, completed the work in June 1911. I guess we didn't do any actual work until about the first of April to amount to anything, except making camp, and preparing. We had from six to twenty, men, varied. We put in, if I remember correctly about 80 feet of the tunnel, intake tunnel, that took a great deal of concrete as well as lumber and timber, and we put in the outlet pipe, which was not in our original contract, from the plant up to the canal, about 700 feet, 4 foot pipe. The intake pipe cost between four and six thousand dollars. I don't know but what it cost more than \$6,000,

(Testimony of E. C. Kilbourne.)

somewhere in the neighborhood of \$6,000. I should judge. The cost of the pipe from the pumping plant to the ditch was in the neighborhood of two thousand four hundred dollars including what it eventually cost us. We had to go and regrade the excavation for the ditch, as it had all blown full of sand nearly the whole distance. We estimated that at \$2,000. before we started work, but all of the work cost more than we estimated. The machinery was put in in April and May. At that time we paid the freight and we paid the difference between what we had billed the people the year before. We paid all the bills of the General Electric Company, Delavel Steam Turbine Company, and Rumsey Company for the small pump, Kilbourne & Clarke Mfg. Co., for the switchboards, for the motors and mounting of the Rumsey pump, George P. Adair Company for the pump, the Gray and Barash Company for setting up the switchboard, connecting it, a lot of piping and valves.

We will give you a statement all together it amounted to \$17,000. or a little less.

Q. Didn't you testify before the referee in bankruptcy, in Seattle, that the machinery had already been paid for the year before.

A. I don't think I did.

Q. The Puget Sound Bridge & Dredging Company didn't do any work after 1910, did they?

A. No.

(Testimony of E. C. Kilbourne.)

Q. Then if anything was there while they were at work it was there in 1910, was it not?

A. Sure.

Q. When did the Kilbourne & Clarke Company, quit business?

A. Ended December 31, 1910.

Q. Now, you said that C. A. Kilbourne, furnished to the Kilbourne & Clarke Company about \$72,000.

A. Kilbourne & Clark.

Q. Now, I believe you said the reason for making the deed to him was that your wife wouldn't sign any notes.

A. That was one of the reasons, and also it was immaterial who secured, C. A. Kilbourne, or myself. It was the firm then of E. C. and C. A. Kilbourne on this particular deal, and it would. *and it would* have been practically immaterial who owned it.

Q. Now who was the Kilbourne Company?

A. E. C. and C. A. Kilbourne.

Q. Is it incorporated?

A. No, sir. It is now.

Q. Since when?

A. Oh, about a month ago.

Witness, was asked how much time he had spent on the Tobey ranch.

A. I couldn't right off hand, give the number of months, but have been there a great deal, very frequently, and all winter long, putting in buildings and other improvements. I have full charge of it. The superintendent was under me. The accounts are all.

(Testimony of E. C. Kilbourne.)

kept in the name of the Kilbourne Company, have been ever since we had the ranch.

Q. Who constituted the Kilbourne Company, prior to the time they were incorporated?

A. E. C. and C. A. Kilbourne.

Q. Isn't it a fact that C. A. Kilbourne, pretended to be president of the company, during the years 1911 and 1912?

A. Not only pretended to be but he was.

Q. I understood you that the company had only been incorporated about a month.

A. That is true, but we treated it just the same as though a company, all though it was a partnership, and I signed as vice president, and he signed as president. We had intended to incorporate from the start, sometime when we got around to it.

Witness was asked how much grain they got on the place in 1912.

A. About 47,000 bushels, 2900 acres in cultivation.

Q. Did you get all that off the Tobey Brothers ranch?

A. No, I think the only piece is what is called the Chance quarter, between 100 and 120 acres.

Q. I believe you said Mr. Kilbourne, that you got a piece of property in Burke's Addition to Seattle, from the Columbia River Orchard Company.

A. Yes, sir.

Q. What did you do with that?

(Testimony of E. C. Kilbourne.)

A. Still have it. Still have it in my name. Took it in pay; final settlement.

Q. You still have got that as security?

A. No.

Q. You have got that in addition to the Tobey Brothers Ranch?

A. Yes, sir.

Q. Did you get it before or after the Tobey deal?

A. Before.

Q. And you had the title in your name at that time?

A. Yes, sir.

Q. How did you come to get it?

A. Turned over to us by Mr. DeLarm—The Columbia River Orchards Company. When it was taken, there was no price fixed, but he called it worth \$1,000., Mr. DeLarm did. Went out and had it appraised by the neighbors and got all the way from \$700 to \$1500. according to which man gave the price.

Q. Why, didn't you turn that back to Mr. DeLarm, when you made the Tobey deal?

A. It was part of our deal by which we were to keep it; everything that had all ready been turned over to us previous to that time,—we just sawed off the account at that date, except the agreement to turn back the two Tacoma properties, when they paid the \$7500. to the Bridge Company, and the \$2200. to the Moran Company.

(Testimony of E. C. Kilbourne.)

Redirect Examination.

If Mr. DeLarm, when he got the Clapp mortgage, had realized the full amount and paid the \$7500., over to the Puget Sound Bridge & Dredging Company, as he ought to, then there would have been no lien on the property, would there?

A. That is correct.

COURT: No lien on the Orchards property.

MR. WOOD: Yes, sir on the Orchards' property.

I will show you a statement dated October 31, 1910, with a lead pencil memorandum at the foot, and first I will ask you whose memorandum that is.

A. That is my writing and my initials.

Q. Can you identify that then as a statement which went out to the Orchards' Company?

A. Well, I am not positive that it went to them, but it undoubtedly did, our bookkeeper made it up.

Q. It is your retained copy, is it?

A. Yes, sir.

Q. In your files?

A. Yes, sir.

Q. Examine that and see if there are any credits on that for those later payments that were realized from those various sources, securities and others.

A. Yes, there is a credit memorandum of drayage account \$11.00; Watchman's supplies, \$11.40; salaries \$70.00; Cash, proceeds equity deed Green Lake Addition, \$1,000.00; cash W. E. DeLarm, \$100.; cash

(Testimony of E. C. Kilbourne.)

W. E. DeLarm, \$100. and by cash December 27, 1910, \$350.

Q. Was that after that statement of September there? After that statement of September there were credits given and statements rendered them accordingly?

A. Yes. We gave all those credits on our books; all that I have spoken of, and maybe more that I didn't speak of.

Q. Then I come to this point: That when the settlement was made with DeLarm, speaking in round numbers, with all credits taken, \$43,000. in round numbers was owing your company?

A. Yes.

Q. And after that nothing was received for which he was entitled to credit, is that right?

A. That is right, yes.

MR. WOOD: I offer this in evidence.

Marked "Defendants' Exhibit L."

Q. I will show you duplicate of statement of September 22, 1910, already in evidence, Plaintiffs' Exhibit 135 and ask you who put the acceptance of it as a stated account on the corner?

A. Mr. W. E. DeLarm.

Q. Did you see him do it?

A. Yes, sir, asked him to do it.

MR. WOODCOCK: What is the date of that?

MR. WOOD: It is the same date as yours, and I offer it in evidence.

(Testimony of E. C. Kilbourne.)

Q. From that time did that account bear interest?

A. Yes, sir, and interest was properly chargeable before that time, but our bookkeeper usually neglected to do it.

Q. Then what is the meaning on this statement "Interest not included"? You say you wrote that there (referring to Exhibit L).

A. Because our bookkeeper neglected to put in that interest. Interest was properly chargeable from the dates in the original contract, when they failed to pay—make the payments as agreed.

Q. By the terms of the contract?

A. Yes, sir.

Q. Well, that is in evidence and will speak for itself. Now, there has been some suggestion here on cross examination that seems to me to bear this import; that you claim to have expended in round numbers \$17,000. in doing your supplementary work, but that part of that was made up of machinery, switchboards, the stuff already on hand and paid for by the Orchards Company, prior to that time. Is that true?

A. Well, part of the machinery—the machinery had been charged up to them in part, as far as Kilbourne and Clark had had to pay it.

Q. Representing actual money paid out?

A. Yes, part payments on machinery and—but not the full payment on all the machinery, and there were things in there.

Q. Was there anything in that \$17,000. that didn't

(Testimony of E. C. Kilbourne.)

represent or was that total of \$17,000. actual cash outlay to complete the work according to your agreement?

A. Yes, sir; *that* was no profit put in.

Q. I mean there was nothing put in there that was charged over twice?

A. No, sir; there might have been in this way; there was some lumber and forms, timbers gotten out and charged the year before. When we came to do the work, we found that Mr. Fox, had taken these timbers and used them on his ditch, and we had to buy more new.

Q. Well, that was a new outlay?

A. Yes.

Q. All that I am asking you is this \$17,000. was every cent of it actual honest new outlay?

A. Yes, sir.

Q. You have an interest in this Tobey ranch?

A. Yes, sir.

Q. Now, Plaintiffs' Exhibit 145, is a letter dated May 27, 1911, to Mr. C. M. Glover, at Rock Creek, Oregon, stating that you have examined the 640 acres of wheat, believe it to be a fine tract of land, and that you didn't care to take it but referred their letters to DeLarm and Biehl, Empire Building, Seattle, saying that they bought the Tobey ranch and paid for the same in bonds of the Columbia River Orchard Company." "You might write them addressing," etc. After you people bought in there and became known as having purchased in there, did

(Testimony of E. C. Kilbourne.)

you receive several offers of sale from different people?

A. I thought the whole country was coming down on us for sale.

Q. And you got a great many of those letters?

A. Letters and personal interviews offering property for sale.

Q. And did you make the same answer to all of them that you had referred them to the same people, DeLarm and Biehl, that they might deal in bonds?

A. No. This is the only one that I ever referred to them. He wrote twice to me.

Q. Mr. Glover did?

A. Yes.

Q. Have you got the other letter?

A. I have a copy of it.

MR. ERSKINE WOOD: Have you a copy of it?

A. No, not a copy of Glover's letter. I have a copy of my answer.

Q. (Taking letter) Well this is a little earlier than the letter they have introduced, May 23, 1911. I will ask if that is a true copy of letter you sent to Mr. Glover?

A. Yes, sir.

MR. WOOD: I offer this in evidence, just to complete the transaction; It is not very important.

Marked "Defendants' Exhibit N."

Q. Now, at the time, May 27th, or the end of May,

(Testimony of E. C. Kilbourne.)

at the time you wrote this letter, did you believe those bonds good?

A. Yes.

Q. Why did you think they were good?

A. Because we had practically completed the pumping plant then, Fox was about through with *hid* ditch, well along with it, and it looked as though things were going to be all right.

Q. You thought water would be in the ditch?

A. Yes, sir; we had then the machinery all, in.

COURT: Did you know how many bonds had been issued?

A. I supposed, \$300,000.

COURT: That is what you thought *when* you wrote this letter?

A. Yes, sir; I will state right here, there was something I forgot when they asked me the question; when DeLarm told me he paid \$140,000. instead of \$120,000 bonds, when I learned that, I was interrupted or else I forgot, some additional conversation, which is this: When I protested about his paying such a price for the farm, it wasn't worth it, and he explained, why, as I said, I asked him—I says, “Where did you get your bonds? How did you get so many?” I had in mind all the time he had \$300,000. I wondered how he could get \$140,000. then because I had known of some of his—of his having bought properties for, bonds, he told us about, but he said “Why, I traded for some of the

(Testimony of E. C. Kilbourne.)

bonds, and got them back, and that gave me enough to furnish Tobey Brothers with \$120,000.

Q. Then you didn't know that it was an unlimited issue, based on percentage of securities?

A. No, he had told us it was limited to \$300,000., and that *it* what we had gone on all the time; and the Trust Company was the Washington Trust Company of Seattle.

Q. And you went on with your contract on that ground?

A. We went down to the Washington Trust Company, and I saw John Schram the president, and he said yes, they were trustee for the bonds, and they would not be issued until the mortgages were put up with them, and I further knew Mr. John Schram and Mr. John Clise were both interested in a large irrigation scheme in Billings, Montana, and both understood the irrigation and bond business.

Q. You thought \$300,000. bond issue was the limit?

A. Yes, sir.

Q. That was as high as it could go?

A. Yes, under the mortgage, and was so told by Mr. DeLarm.

Q. Now, I wish you would explain—I won't say to the Court but for my benefit—just what induced you or Mr. C. A. Kilbourne your partner, both of you, to put a second mortgage on that land for \$17,500. Tell how it came up and why you did it.

(Testimony of E. C. Kilbourne.)

A. We were crowding Mr. DeLarm all the time to pay that \$7500 as he had agreed, to the Puget Sound Bridge & Dredging Company.

Q. To relieve the lien?

A. To relieve the lien, and relieve us on the \$7500 because we owed them then about \$25,000. and the Puget Sound Bridge & Dredging Company had a suit *stated* over at Ephreta, to foreclose that lien, and asking for a judgment against the Columbia River Orchards Company and Kilbourne & Clark Company, and they at our request, and at Mr. DeLarm's request, on promises that he would get that \$7500. postponed that suit from month to month, and month to month, until they had gotten what I thought was the limit of their patience, and were going ahead to take out judgment against us. We owed it anyhow, and we didn't want to have a judgment taken out against the Kilbourne & Clark Company. We wanted to keep its name clear, and we owed it, had to pay it, and it didn't make any difference at that time whether we paid the bill ourselves, and then DeLarm owed us, or leave it go and have DeLarm owe the Puget Sound Bridge & Dredging Company, and they jump on us; the money was coming.

Q. And Wakefield should have turned in that money for the benefit of the Puget Sound Company?

A. Yes, sir; a breach of trust on his part.

COURT: Do I understand, Dr. Kilbourne, that the reason you did not follow up this \$17,500, and

(Testimony of E. C. Kilbourne.)

see that it was so paid over, was that you trusted Mr. Wakefield to do that?

A. Yes, sir; and as soon as he didn't do it within a very few days, then we crowded him and went to a lawyer and everything else. The most surprising deal I ever saw in my life.

Q. You expected him to pay \$10,000 to DeLarm and \$7500. to the Dredging Company?

A. Yes, sir.

Q. Mr. Wakefield is any attorney, isn't he?

A. Yes, sir.

Q. As far as you know, did he at that time have a good professional standing?

A. Why, I knew him by sight, and spoke to him on the street for ten or fifteen years, and supposed that while he didn't have much practice, he was all straight. In fact, I had seen him in church lots of times.

Q. That ought to have made you suspicious. Now, up to the time of writing these letters recommending them that they might sell their lands for bonds, had you any knowledge of anything that aroused your suspicions that DeLarm was crooked, and that this think was going to fail?

A. No, Mr. DeLarm inspired perfect confidence.

Q. You don't have any facts in your own knowledge?

A. No.

(Testimony of E. C. Kilbourne.)

MR. WOOD: There was one thing that I might help opposing counsel in.

Q. You shut down work as the Kilbourne Clark Company because you didn't get paid?

A. Certainly.

Q. And you knew you didn't get paid because they didn't have money didn't you?

A. Sure.

Q. And you knew they were hard up?

A. Yes.

Q. And you supposed when you started your work, and the water was going, that was the end of the difficulty?

A. Yes.

Recross Examination

MR. WOODCOCK: If the Court please, I will examine.

COURT: All right, go ahead.

Q. You say, Mr. Kilbourne, that you trusted this all to Wakefield, all that money?

A. We trusted the mortgage and note.

Q. Well the money.

A. We told him what to do with the money.

Q. Well now, you say he defrauded you in that transaction?

A. Yes, sir.

Q. He fooled you, that is he embezzled the money?

A. Yes.

(Testimony of E. C. Kilbourne.)

Q. Well, you didn't make any disturbance about it?

A. I guess we did.

Q. You never had him arrested did you, anything like that?

A. No, we took it to a Mr. Walter McClure, and gave him authority to go the limit, and do whatever he thought best to get the money.

Q. Don't you think that a man who embezzles money ought to be prosecuted, if *the* embezzles money put in his hands?

A. Well, we had a good deal of confidence in our lawyer, gave him authority to do whatever he wanted; that is what the lawyers are for, I suppose.

Q. But you yourself knew, independent of lawyers or anybody else that somebody embezzled your money and misappropriated it he ought to go to jail, or be prosecuted?

A. When I put a matter in the hands of a lawyer in whom I have confidence, I let him have it.

Q. The way you understood, it, from what your lawyers told you, they didn't think you could prosecute him criminally, or anything of that kind?

A. Yes, they thought we could.

Q. You didn't care to do that?

A. No, wouldn't do any good. He hasn't got the money.

Q. Has Wakefield got any property himself?

A. I don't think he has; couldn't find any.

(Testimony of E. C. Kilbourne.)

Q. So you just let the matter rest. He misappropriated over \$7500, of your money, and you let it rest at that? Without trying to get it, either in a civil way or in a criminal prosecution?

A. The thing isn't through with yet. There are other things entering into it that you may not know of, that I don't care to develop in court, because there is another suit coming up on that question.

Q. But up to date, you haven't made any disturbance about that?

A. That is your testimony.

Q. What is that?

A. That is your testimony.

Q. I ask you.

A. No, you didn't ask me. That is what you said.

Q. You haven't made any disturbance up to date?

A. We think we have.

Q. Now, Mr. Kilbourne, in reference to the other matter about the bonds, you say that as far as you knew, the bonds were all right. Now, isn't it a fact that up to the time of the Tobey deal, you knew that the DeLarm outfit and all their institutions were broke, and couldn't raise money?

A. They kept Mr. Fox going \$5,000. a month.

Q. Well, you couldn't get your money out of them, could you?

A. Well, the reason was very often because Fox was a better collector and he got it.

(Testimony of E. C. Kilbourne.)

Q. Well, I am talking about you.

A. Why, yes, the facts are — — —

Q. Your firm was practically broke, along with the other firm You couldn't raise money to carry on their business account of the fact — — —

MR. WOOD: I don't know why counsel says these people were broke. I don't see why counsel injects in the question something that hasn't appeared—that Kilbourne and Clark were broke.

Q. That is what I want to find out. I think they were. That is the reason I ask the question. Isn't it a fact your company was hard up and very much embarrassed on account of the fact that you couldn't get money out of DeLarm?

A. DeLarm was only one out of a dozen in the same fix.

Same kind of institutions, that were hard up all along the line; half a dozen others. It was general.

Q. That was one of the items, though?

A. Sure that was one of the items.

Q. But your company was in the same—that is, you were hard up, and threatened *with* your creditors, and you couldn't raise the money you needed to carry on your business?

A. Well we weren't threatened by any of our creditors.

Q. Isn't it a fact that you were very much embarrassed financially about the time this Tobey deal came along?

(Testimony of E. C. Kilbourne.)

A. I don't know—we were short of capital; no question about that.

Q. Now, you knew this, Mr. Kilbourne, didn't you? That the DeLarm outfit; and all their institutions, didn't have any money; that is, if they did have any money, it wasn't in sight where you could get it?

A. Well, they had spent a good deal of money.

Q. And didn't you know further that the only way they could acquire property would be by handling these bonds?

A. Oh, no; they acquired a larger part of their property in other ways. The Billings property, Mrs. Billings herself told me she gave an exchange for land over in Wahluke, Mr. Reinmouth told me that property at Reinmouth had been exchanged for land over at Wahluke.

Q. That is trading one property for another?

A. It was for land under the project at Wahluke.

Q. But at the time of the Tobey deal, isn't it a fact, as far as your knowledge goes, that the DeLarm outfit, didn't have any money to buy property with?

A. I don't know. It was presumption on my part — — —

Witness interrupted by objection as not proper recross.

A. I can volunteer the information that the Morrison *place* of property, that lot out in Burke's Second addition was acquired with bonds. I knew that

(Testimony of E. C. Kilbourne.)

from Mr. Morrison. I knew these two Tacoma properties were acquired by Wahluke property, from the people themselves. Mr. Rienmouth and Mr. Billings.

Q. But you wouldn't take the bonds yourself for your pay?

A. We weren't in the bond business. We were in the contracting business, and it is our fixed policy not to take any property, bonds, or anything else for our contract.

Q. Isn't it a fact, Mr. Kilbourne, that Mr. Fox, has foreclosed a lien upon the Wahluke project for something over \$32,000?

A. I understand so. I was in the court when he started his foreclosure.

Redirect Examination.

Q. You afterwards did buy the Glover land, didn't you?

A. Yes, sir.

Q. I wish you would just state briefly why you bought it after you had written him the letter that you didn't want it?

A. Mr. DeLarm came in about a month after that, a month or two and said—asked—says—"I would like to sell you 840 acres of land" I says, "We are not buying land" He says, "Well, it joins your ranch" I said "Where?" He said, "It is the Glover land", I said, "You got that" He said, "Yes." I said, "How did you get that and when?" And he

(Testimony of E. C. Kilbourne.)

explained that they bought it with their bonds, and then wanted to sell it to us. The first thing he said, before all this, he came in and said, this "We have got 840 acres of land adjoining yours. Can you take it to the Puget Sound Bridge & Dredging Company, and ask them if they will accept that and release that lien?" I said "All right. I will try and see." And I went up and called on Mr. Hedges, president of the Puget Sound Bridge & Dredging Company. He said, "No, what we want is the 'mon'," *if* the expression he used, and I went back and told Mr. DeLarm that, and then he wanted to know if we wouldn't buy it and I told him we had nothing to buy it with, "Well," he says, "we owe you. We owe Mr. Kilbourne, \$2950. I will take that, and you have an engine which we want to use over there on our auxiliary plant, and you have a motor boat on Lake Washington, haven't you which we want to use to run from Kennewick and Pasco, to Wahluke" I said yes. Well, he said, "You have some other machinery, haven't you, some dredging machinery and steam turbines?" "Yes." He seemed to know about those. He was starting to finance a company for the Nometric Dredging Company. That is how he found that out; but the upshot of it was that we told him that if we could get the Puget Sound Bridge & Dredging Company to accept that land as security, and give us time, we would pay it if we could agree upon terms. And we went over the machinery and every-

(Testimony of E. C. Kilbourne.)

thing we had, to make a trade with him; and I made four *or* five different memorandums of the stuff, and then I saw Mr. Hedges again, and he said that he would send Mr. Dyer, the Vice-president of their company, up to the examine the land, and if it satisfied Mr. Dyer, they would accept that as security, and give us additional time, but wouldn't agree as to just what additional time. I think he said he would put it over until September. This was the latter part of June or the first of July. The result was they sent up Mr. Dyer, he was over building the Clackamas dam, and went up and examined it, and it was deeded to Mr. Dyer, but we paid for it. It is up now in the Puget Bridge & Dredging Company's hands as security.

Whereupon proceedings herein adjourned until 10 o'clock tomorrow morning.

Portland, Oregon, Saturday, May 17, 1913, 10 A. M.

E. C. KILBOURNE. Resumes the stand.

Redirect Examination Continued.

(Questions by Mr. WOOD.)

Did you purchase other lands than the Glover lands, and purchase with money?

A. Yes, sir.

Q. Adjoining these Tobey lands?

A. Yes, sir.

Q. How *dod* they compare in character of soil and location?

A. Practically the same.

(Testimony of E. C. Kilbourne.)

Q. And what did you pay for these additional lands?

A. We bought 1440 acres of Mr. J. B. Garrison, Jr., and paid \$10.87 an acre for them.

Q. What time was that you bought?

A. That was in May, 1912.

Q. And did you buy any others?

A. No only that 840 acres that we spoke of yesterday.

Q. What was the name of the ten hundred and something acres?

A. J. B. Garrison, 1440 acres.

Q. Why did you buy these 1440 acres from Garrison?

A. Several reasons. One reason we had an excessive amount of moisture that year and everything was looking fine, and it looked as if we were going to have a bumper crops, and we felt we might possibly be able to pay for that land, or a large part of it, as we had it on easy payments, out of the land; and we had always kept this one thing in mind, that eventually we expected to put water from Rock Creek, onto the land, and it required a large enough amount of land to carry through such a project as that; you can't do it with a small piece of land.

Q. And how about reducing the average overhead charges?

A. Oh, that is another matter too. Our overhead charges and my expense and superintendence and

(Testimony of E. C. Kilbourne.)

a great many other items would not be any more for the 7,000 acres we were now handling, than the 4300 previously. In fact, you have to have large areas there in order to make things pay.

Q. You didn't write the letter to *Nott*? I think that was C. A. Kilbourne?

A. Yes, No, I didn't write it.

Q. Well, I will take that up. Those are the only things you acquired?

A. Yes, sir.

Q. Although numerous others were offered you?

A. Oh, we had lots of land, offered all the way from \$12.50 to \$15. an acre. That gentleman that was on the stand here, Mr. Ralston, recently offered us 200 acres for \$3,000. just recently.

Q. Now, you said that DeLarm, if I remember correctly, told you that he what you consider, or understood, was a bond issue of \$300,000 practically sold in the east.

A. Yes, that was right on the start of our first conversation with him in regard to the contract. That is after—at the time when we were drawing up the contract.

Q. Did you follow that up afterwards with him, to find out if they were sold, why the money wasn't forthcoming?

A. Well, I did, even before, that, he showed me letters and telegrams showing that the parties from the east, the engineer and attorney and one other

(Testimony of E. C. Kilbourne.)

member of the company, would be in Wahluke on such and such days to examine the property, and then he told me, in the course of the conversation, that Mr. A. L. Funk, a financial broker in the Pioneer Building, in Seattle—a man who stands well there—was the broker through whom he was dealing. I therefore went to Mr. Funk, and Mr. Funk confirmed everything that Mr. DeLarm had said. Then later, two or three months, I think it was, when the money was not forthcoming, I asked Mr. DeLarm why the Trust Company back in Chicago didn't furnish the money. I knew they had *come* one there and made their examination and had time to get their report in; and he gave me some reasons, fixing up titles etc., so I went to Mr. Funk, again. I said, "Mr. Funk, how about this? You said these bonds were practically sold. Why isn't the money forthcoming? I understand from Mr. DeLarm that the report of the engineer, and everybody that came out from Chicago was entirely favorable." He said "Yes, that is true," and he says, "Just as soon as Mr. DeLarm does the things that are required of him by the engineer and attorney, the money is ready."

Objected to as hearsay and the Court directed witness to state the result, not the details of it.

Q. Well, just state the result of what Mr. Funk told you.

A. The result was, I asked him what were the

(Testimony of E. C. Kilbourne.)

things that were required of the Columbia River Orchard Company, before they would get their money, and he gave me a list; Secure the right of way; the deed from the Northern Pacific for the right of way and the pump house site, and clear up several things in the way of titles, and one thing and another that are necessarily fixed like that; I went to Mr. DeLarm and I said, "Why don't you go ahead; get a move on you and do these things?" I said, "I am going over to Tacoma on another matter and I am going to see Mr. Plummer anyhow, and will see if I can't get these deeds for the right of way." He said "All right, you go ahead and do that. You attend to that end of it, and we will do those other things, and we will get the thing through as quick as possible." That is why I went to see Mr. Plummer at that time.

Cross Examination.

Q. This \$300,000. bond issue you have been testifying about, DeLarm, told you about that when you first entered into the contract of 1910, didn't he?

A. Yes, sir. He said that was about the proposed amount of bond issue, before that was had.

Q. And this Tobey deal occurred over a year after that?

A. Yes, sir.

Witness was handed a letter dated March 27, 1911, identified as one written by the witness, but not his signature, but a copy.

(Testimony of E. C. Kilbourne.)

Q. You had a conversation in February, 1911, over the telephone with H. S. Wells, of the Pacific Power & Light Company, in regard to furnishing the power, did you not?

A. Yes, sir.

Witness handed letter written by Mr. Wells, and identified.

Witness said the subject matter is familiar to me, introduced, "Plaintiffs' Exhibit 146.

Q. Now the Pacific Power and Light Company, refused to enter into a contract with the Columbia River Orchard Company.

A. No, they stood ready at all time, to do so, they do now.

Q. Why didn't they enter into the contract then, if you know?

A. The last thing I know about the negotiations they were going to. After we had completed the plant in 1911, I understand from Mr. Anderson, that they stand ready now to furnish him power at any time that he is ready for it.

Redirect Examination.

Asked to state the phone conversation, with Wells.

A. I was engineer for the Columbia River Orchards Company on its pumping plant, and all the work connected therewith, I negotiated a contract for power with the Pacific Power & Light Company. I negotiated first with the Hanford Power & Irrigation Company, who were the predecessors and this

(Testimony of E. C. Kilbourne.)

is part of the negotiations, and at that time arrived at a contract which was drawn up and signed, but they required, the Pacific Power & Light Company did, a guarantee that their bill would be paid, and the expenses for running an expensive power line down there would be—they would get it back having their bills paid, and they therefore asked the Columbia River Orchards Company to put up some property, and they did. They offered 200 acres of land, I think it was down in Jefferson County, which they had purchased from Mr. Morrison with their bonds, and it was regarding the title of that land, if I remember correctly. They said *theyt* they hadn't gotten the abstracts, or something of that kind. That is, it doesn't show in that letter but later. They had turned over the description of the property etc., but hadn't turned over the abstracts.

Now this letter says, "The question whether we can accept these or not will depend on our receiving a report on the holdings of the said company. In this statement of their holdings, we would like to know just what title they have to the land, and if they do not have a clear title, what incumbrances there are. As soon as we can get this information we will advise you definitely what we can do. I read from Plaintiffs' Exhibit 146." Now, what was done to further advise them on this?

A. I don't know what land they refer to there,

(Testimony of E. C. Kilbourne.)

but *the* required some property as security for their bill.

Q. Yes, you have said that, but I mean as far as you know, what was done in further compliance with this letter?

A. We furnished abstracts to Kerr & McCord, who were the attorneys of the Pacific Power & Light Company in Seattle, on some land down in Jefferson or Clallam County.

Q. As far as you know, were they satisfied and ready to go ahead, the Pacific Power & Light?

A. I don't think they were satisfied with the value of the land at that time.

Q. You said they were ready to go ahead?

A. Oh, they have been at all times.

Q. Under what condition?

A. That enough security is put up to guarantee their bill. for a year or two.

Q. What did you have to do with the Orchard Company's securities?

A. Nothing whatever. I just simply, anything of that kind, turned the letter over to Mr. DeLarm. I was making the contract for power.

Q. It was simply done to get a power contract?

A. Yes, a part of my business.

Recross Examination.

Q. You knew all the time they weren't able to put up security sufficient to satisfy this Power Company?

(Testimony of E. C. Kilbourne.)

A. I didn't know any such thing.

Q. I will ask if you didn't call upon the Columbia River Orchard Company, in reply to Mr. Wells' letter for a statement of their property and title?

A. No, no more than turning over the Wells' letter or something of that kind.

Q. I hand you a letter directed to the Kilbourne & Clark Company, of February 10, 1911; examine it, and see if it doesn't refresh your memory on that point. Do you remember their writing you such a letter?

A. I had forgotten it, because I passed all such matters over to Mr. DeLarm, if anything in regard to the company because I didn't write the letters. I turned that letter that you handed me first, probably over to DeLarm, and that is the reply to it.

Q. And how did it come that they sent this reply to Kilbourne & Clark Company?

A. Wells.

Q. No, the Columbia River Orchard Company?

A. Oh, naturally, because I had received the former letter. I presume. I have no carbon copy of having written any letter to DeLarm; don't think I ever did in relation to it at all.

Q. They wrote this letter to you then, in response to Wells' letter?

A. I presume so.

Q. You remember receiving such a letter?

A. No, I don't, but presume I did. That is a mat-

(Testimony of E. C. Kilbourne.)

ter that I don't retain in my mind, because it wasn't part of my business. I retain those things that I have to do and do, better than mere statements of things like that. What I observe or have done, accomplished, why, I remember pretty accurately. Those things that I haven't to do with, like that, I don't.

[Testimony of S. B. Hill, for the Defendants.]

S. B. HILL, called as a witness for defendants, being first duly sworn, testified as follows:

(Questions by Mr. ERSKINE WOOD.)

Witness' qualifications as to expert engineer were admitted by counsel.

I was a witness for the government in the Bieh case. I had already prepared a report for Mr. McCourt, and that was the reason I was called on account of being familiar with the situation there (referring to the Wahluke project), having gone into it sometime before that. I made this report at the request of certain clients of mine who were desirous of knowing the exact condition, financial condition and work that had been done there and its value. Made a careful examination of the power plant and the intake, etc., and machinery.

I went over the ground and made a careful examination of all the existing work and construction. I might say that the pumping plant constructed, appeared to be first-class. It was a very nice piece of

(Testimony of S. B. Hill.)

work thru out and the machinery was of the best for the purpose intended. All high class construction throughout, and well built.

I am familiar with conditions more or less along the Columbia River there. The tide, the rise and fall of the river and conditions that have to be met under constructions of that kind. I made an estimate of the probable value of that, duplicate of that. and the construction down there under normal conditions would be \$50,000., but under the conditions met there and having to take care of the rising water and the forced construction, the provision of extra pumps etc., it might range around \$10,000. or \$15,000. in excess of that.

No cross examination.

[Testimony of Frederick G. Simpson, for the Defendants.]

FREDERICK G. SIMPSON, witness called on behalf of defendants, being first duly sworn, testified as follows.

(Questions by Mr. ERSKINE WOOD.)

Occupation electrical engineer, have been such about seventeen years, was in the employ of Kilbourne Clark Company. At the time this work was done, *was* Chief Engineer. I designed the plant and was chief engineer in charge of its construction.

The quality of the work was the very best in all respects. I had charge of the work during the time

(Testimony of Frederick G. Simpson.)

of Kilbourne Clark Company, not under E. C. and C. A. Kilbourne. I had nothing to do with that firm. During my time, the cost ran between forty and forty-five thousand, roughly. I OK-d, the statements and pay-rolls, and sent them down to the auditor. I did not make the completion myself, or have any direct knowledge as the result of such completion.

Q. Are you in the employ of Kilbourne & Clark now?

A. No, am general manager of the Kilbourne Clark Manufacturing Company, of which Mr. C. A. Kilbourne, is officer and stockholder.

Q. Can you identify these blue prints I hand you?

A. Yes, these are blue prints made in my office when I was shief engineer for the Kilbourne & Clark Company, and are drawings for the plant at Wahluke, or near Wahluke?

Q. Just describe the plant briefly, without reference to these prints.

A. The plant originally designed consisted of a reinforced concrete building, the floor of which was 17 feet below the mark which we regarded as extreme high water in the Columbia River. This building housed—was to house two units, two pumping units, each unit to consist of one electric mortor and two pumps. The pumps would be connected to each end of the shaft of the motor. Each one of these pumps had a normal capacity of 5,000 gallons of water per minute, making 10,000 gallons of water

(Testimony of Frederick G. Simpson.)

per minute per unit, pumping against the maximum head of 91 feet; the actual head above extreme low water in the Columbia River, as we formed our observations regarding it was 91.26 feet; from extreme low water point in the Columbia River to the upper end of the discharge pipe, where it expanded into the canal. The work coming under my jurisdiction included the design and erection of this building, the selection of the pumping units, the pipe line from the building to the canal; afterwards in connection with the serving of the station with electric power; I provided triangulation of the Columbia River. There was no survey of the river at that point available, to find a course to run for power lines of the Pacific Power & Light Company.

Q. I just wanted a bried description of the pumping plant itself; that is almost too much in detail.

A. That is the description of the pumping plant as it was.

Blue prints introduced in evidence, Defendants' Exhibit O.

[Testimony of A. B. Graham, for the
Defendants.]

A. B. GRAHAM, witness called on behalf of defendants being first duly sworn testified as follows.

(Questions by Mr. ERSKINE WOOD.)

I reside in Seattle, lived there over 21 years. I am in the lumber business, manufacture of lumber. Platted an addition to Seattle. Had dealing in the Columbia River Orchard Company bonds. I traded some land in the A. B. Graham University Tract or Addition for these bonds, at par, on the basis of the printed price or cash price of the land on sale at that time. I made one trade with Biehl and DeLarm, and one or two others following that. With DeLarm and Biehl, was March, 11, 1911. A whole block was traded, 24 lots. The selling value of the lands was in the neighborhood of \$750, a lot. We were selling lots for that money, all upon a printed price list made before the sales began. Sold for cash, all except those traded, this one trade or two trades that I made. I think I have \$31,000. in bonds, which I got in two trades. I made *there* at par. In the first trade I think there were \$17,000 at par, the second time in round figures \$14,000. or \$31,000, all together. Both were at par. The terms of the second trade were the same as the first except I think there was a mortgage on a few lots in the second trade. I traded, an equity, a blanket mortgage with a release clause of something like \$300. a lot. In the second trade I think there

(Testimony of A. B. Graham.)

was something like a block, but the difference between that and the mortgage cut it down so that it run up in round figures something like \$14,000.

Q. Can you state in the aggregate what the approximate amount of sales you made in your addition for cash?

A. Something like \$250,000.

The date of the second trade was April 1, 1911.

Asked about his standing, witness answered.

A. R. G. Dunn & Company and the Bradstreet Company, give me the best rating that is given anybody. A-A, A-1. Whether I am entitled to it or not.

I have known the Kilbournes over 20 years. I didn't know C. A. Kilbourne as long as that. I have known the Dr. E. C.

Q. How long have you known C. A.?

A. Well, I don't know that I can say. I don't know that I met the doctor when I first went to Seattle, in '91.

Q. What is their reputation for business integrity?

..

A. Good.

Q. Do you know of your own knowledge, whether these bonds were generally regarded during February and March 1911, as of par value and a good many trades made?

A. There were quite a number of trades, and as far as I was able to ascertain they were alright. I

(Testimony of A. B. Graham.)

think the series of bonds I got was what they call the second series—February.

Witness produced a memorandum and testified.

A. I think they were issued in February, sometime in 1911; the interest became due in February 1912.

Q. What interest did they bear, Mr. Graham?

A. Eight per cent.

Q. Are you quite sure about that interest?

A. That is my recollection.

Q. The reason I asked you that is that I think the February bonds bear 7 per cent, and it was the first issue that bore 8 per cent.

A. Perhaps that is right.

Q. What have you done with your bonds?

A. Why, I turned them into this other company, and took stock in the new company.

Cross Examination.

I got preferred stock in the new company for them. I didn't pay any cash, I turned in the cancelled \$9,000. worth of notes. I held notes against the parties who owned 240 acres of land there, and they deeded that to Mr. Anderson for the company in lieu of my cancellation of the \$9,000. notes.

Q. How much was the stock in the new company?

A. \$100,000 in preferred, and \$900,000 in common.

Q. Did you know what was behind these bonds when you traded for them?

A. I had the statement of Biehl & DeLarm.

(Testimony of A. B. Graham.)

Q. And you relied upon their statement?

A. Up to a certain extent. They referred me to Mr. Hodges of the Trust Company here in Portland, whom I afterwards, or at the time, wrote to him, and he wrote me back the assurance that he had the security \$125. for every \$100 of bonds issued, and that there was no way possible that I could be beaten out of my money on these bonds, and that they were certain to be retired within seven or eight years from the time of the issue.

Q. Did they refer you to the Kilbourne Clark Company?

A. No, sir.

Q. Either of the Kilbournes?

A. No, sir.

Q. Now, isn't it a fact, that you relied upon this statement in making this deal?

A. Not entirely. I went to a number of other people.

Q. How did you come to go to the other people?

A. Well, because they were trading in them at the time.

The addition that these lots were in that was traded was an addition that was platted in my name, A. B. Graham University Addition. The equities were in the same addition, 40 acres, out at the University where the public library is on one corner of it.

[Testimony of William F. Howe, for the
Defendants.]

WILLIAM F. HOWE, witness called on behalf of defendants, being first duly sworn, testified as follows:

(Questions by Mr. ERSKINE WOOD.)

Residence, Seattle, Washington, lived there 10 years. Am in the real estate and investment business. Was familiar with the general value of the Columbia River bonds, on the Seattle market in March 1911, and February 1911. I was trading my own property for them at par. Made a large number of trades (Referring to his book). On February 4, 1911, I exchanged a lot that I valued at \$1200, and took \$1200 worth of bonds of the February issue 1911. I sold a desert relinquishment claim near Knappton, that had cost me \$1500, I took \$1400 of Columbia River Orchard bonds. These were all the old issue of 8 per cent bonds. On February 8th, I exchanged four lots in Port Angeles, in the original townsite for \$2,000. of the bonds. I valued the lots at \$2,000. On February 14, I exchanged a 10 acre tract of fruit land near Ephrata for \$1,000. of the bonds. I valued the lots at \$1,000. The bonds were all I think if the February issue at that date.

Q. All except that one that you mentioned?

A. Yes, sir.

On February 15th I exchanged ten acres of land on Locust Island, and 40 acres of land near Fort Ludlow.

(Testimony of William F. Howe.)

valued at \$2800. and took \$2800. bonds. On February 16th, I exchanged a twenty acre tract of fruit land near Winchester, valued at \$3,000. and took \$3000. bonds. On February 16th I exchanged a lot in H. S. Turner Park Addition, Seattle, receiving 200 bonds and ten shares of stock in the Yakima Moxie Company, and a mortgage back on the lots for \$500. that being valued at \$1700. On February 20th. I purchased two and a half acres on the east side of Lake Washington, opposite Seattle, valued at \$1400., and gave \$1400., in bonds.

MR. WOODCOCK: I don't see, if he knows the market value of the bonds, why he should go, all through this.

MR. WOOD: Well, if you have enough, I have.

A. There were thirty or forty more deals, that I had.

Q. What was the general market value of the bonds then, Mr. Howe, at that period you have covered?

A. For the first four months of that year, par.

Cross Examination.

(Questions by Mr. WOODCOCK.)

Q. Who were buying bonds at par, outside of this trading?

A. They were not selling for cash. I didn't mean to convey that impression.

Q. They couldn't be sold in the market for cash?

A. There couldn't anything.

(Testimony of William F. Howe.)

Q. What did you do with the bonds you got?

A. I used them simply as a circulating medium, as we used to use the bank certificates, when we were on a basis that there was no cash, and I used the bonds. First I exchanged my own properties for bonds. I then would use the bonds and acquire more property. I then would trade that property for more bonds and simply use the bonds in lieu of money.

Q. You finally then got a lot of the bonds by trading them for other property?

A. No, I got rid of my bonds, because several months after the time that we are discussing here the market value of the bonds went down, and as they commenced to decline, I exchanged my bonds with brokers in Seattle, and acquired real estate and held the real estate rather than the bonds.

Q. Did you know what was behind those bonds?

A. Well I made as careful an inquiry as I felt a business man could make under the circumstances.

Q. Now, if it is a fact that the companies issuing these bonds didn't have any property in their own name; that is, only options and property of that character, and nothing where they had absolute title, and you had found that out, would you have taken the bonds?

A. I didn't find that out, and that was not given to me as being facts in the case.

Q. Well, you have learned since then about what the facts were?

(Testimony of William F. Howe.)

A. Yes, but I didn't know it at that time.

Redirect Examination.

(Questions by Mr. ERSKINE WOOD.)

Had you know the Kilbournes previously to this?

A. Not personally; no, by reputation.

Q. Do you know their general reputation?

A. Yes.

Q. What is it?

A. Strictly first-class.

[Testimony of Walter S. Wade, for the
Defendants.]

WALTER S. WADE, witness called on behalf of defendants being first duly sworn testified as follows.

(Questions by Mr. ERSKINE WOOD.)

My business is merchandising and farming at Olex, Oregon, in Gilliam County. I have lived in Gilliam County, going on ten years. Been engaged in farming all that time. In the immediate vicinity of Olex I have no land; but we have in the neighborhood of four or five thousand acres about ten miles from there. I know the Tobey Brothers land that the Kilbournes are now farming. Know it very well. I believe I would be a fair judge of what land ought to be worth there, what it is worth a fair market value of the Tobey Brothers land. I think \$15. an acre.

I farmed the land two years, as a tenant. I assumed a contract of other parties than myself. The

(Testimony of Walter S. Wade.)

financial result from the operation of the land was that we made a loss in the neighborhood of \$7,000. 1909 there was a scarcity of rain fall; we had no rain, and it resulted in a crop failure. 1910, we recovered some loss. Between the years 1907 and 1912 the crop conditions there haven't been very good. They have been very poor.

Cross Examination.

Q. Now the \$15. you say land is worth is that on a cash basis?

A. I think that is as much as any land was ever sold for in that vicinity. That I know of. The land adjoining the Tobey Brothers was sold for \$15. cash.

I presume it was in 1908, as near as I can remember it was bought by R. T. Cox here at Portland, for the Inland Investment Company. They paid that cash for the land in 1910.

Wheat and barley, we raised something like 14500 sacks. Measured a little better than two bushels to the sack. I think there was fully 30,000 bushels raised that year on about 2100 acres. The price that year was between 70 and 75c and barley ran \$20. a ton. I couldn't tell exactly how much of the 30,000 bushels was barley.

Our expenses in 1910, was around \$10,000. Ten or twelve, I couldn't say. We hired everything done. Every man that worked on that place was paid wages.

Q. If you had been doing it yourself you could

(Testimony of Walter S. Wade.)

have done it considerably cheaper than that couldn't you?

No, not unless I had a family of boys, a man that has his own help, of course could save that.

1912, was a good crop, better than an average crop. In 1912 all over Gilliam County, as a rule, it was better than 1910.

[Testimony of H. S. Wells, for the Defendants.]

H. S. WELLS, witness called on behalf of defendants being first duly sworn testified as follows:

Present occupation, new business manager of the Pacific Power & Light Company. I am manager for new business.

Q. What was your business in February 1911?

A. I can't remember the exact date, it was either assistant new business manager, or new business manager. The change came about that time.

Letter of February 17, 1911, addressed to Pacific Power and Light Company, signed Columbia River Orchards Company, by W. E. DeLarm, President, identified and introduced in evidence, "Defendants' Exhibit P."

[Testimony of J. W. Todd, for the Defendants.]

J. W. TODD, witness called on behalf of defendants, being first duly sworn, testified as follows:

I reside at Seattle, lived there 7 years. Business real estate.

Q. Do you know anything about the value of Columbia River Orchards bonds, in the early part of 1911?

A. Yes, sir. Made trades for them. The first trade I made for them was an equity in a lot in the heart of the City. The equity was valued at \$35,000, and I took \$35,000 in bonds for that. The lot was on 4th Avenue, between the Smith Building and the City Hall in the center of the City.

Q. How did you base your value of \$35,000 on it?

A. That is what it was valued at and sold for that before I got it. That is what I paid for it. In fact I paid a little more for it, but I got it right in the heart of the boom.

Q. A mortgage on the lot and you held the equity?

A. Yes. The bonds I traded were Series A. February bonds, and I made the trade about the middle of March 1911. I don't suppose I investigated as thoroughly as I should, but I made quite a little investigation. Had my attorney look them up and made quite a little inquiry. The lot has sold a number of times since, about that price.

(Testimony of J. W. Todd.)

Cross Examination.

I haven't got the exact date in March, (referring to the trade). I don't remember who the deed was made to. I think it was a blank deed.

Q. Whom did you deliver it to?

A. I believe it was Nutter & McClure, brokers. I think they delivered me the bonds.

Q. What did you do with your bonds?

A. I traded them for other property at various times. I made lots of trades. I couldn't give you the dates; traded for other property, and traded other property for bonds, and kept them moving.

Q. Where did you get your information in regard to the value of the bonds?

A. Various parties. I got some information from Dr. Howe, and I had my attorney look it up, and then I got some information from the Washington Trust Company of Seattle. They acted as trustee for the company in the first issue, on their eight per cent bonds, and I got some information from them. They said that it looked very favorable, although they didn't *xare* to handle it any longer; that if they got through thirty days, why the company would be all right.

Q. Which bonds did you get? The original issue of 1910, or those of 1911?

A. The Series A. February, 1911.

Q. Did you know personally what was behind the bonds?

(Testimony of J. W. Todd.)

A. Not personally, no, sir.

Q. Did you inquire what was behind them?

A. Yes, sir.

Q. What did you ascertain was behind the bonds?

A. I ascertained that there was \$125, behind every \$100, bonds.

Q. \$125. in what?

A. In securities, mortgages.

Q. What kind of mortgages?

A. Well, I didn't inquire what kind of mortgages.

Q. Did you learn any different later?

A. Later, yes, sir.

Q. What did you learn later?

A. That there wasn't much behind them; at least they were so far behind then that it wouldn't do any good anyway.

[Testimony of H. P. Nolan, for the Defendants.]

H. P. NOLAN, witness called on behalf of defendants, being first duly sworn testified as follows:

(Questions by Mr. C. E. S. WOOD.)

Business Real estate business. Live in the City of Seattle. Lived there in January, February and March, 1911, have lived there continuously for nine years.

In the year 1911, was in the real estate business.

Q. Did you ever deal in the Columbia River Orchard bonds?

A. Yes, sir.

(Testimony of H. P. Nolan.)

Q. What was their going value in the Seattle market in January, February and March, 1911?

A. Par.

Q. Did you ever take any steps to investigate the value of the bonds?

A. Oh, yes. I obtained a statement from the Columbia River Orchard Company, *if* their condition. (produces statement). And they furnished me not only with a statement but with copies of their prospectus for the purpose of handling their bonds.

Q. Were you to handle them?

A. Well, they wanted me to handle them, that is, for others and on my own account for my own property, and I did that. I sold my own property for bonds at par.

Q. This statement bears date January 27, 1911, was it received at that time?

A. I think it was received the next day.

Introduced Defendants Exhibit Q.

They furnished me with a copy of their prospectus showing physical condition of their property there, and upon investigation I found that much that they stated was true. The land was as this prospectus showed.

Q. And you say you sold some of your own land for bonds?

A. Yes, \$30,000. worth.

My property was in the City of Seattle. It was in several pieces. There were three of them that

(Testimony of H. P. Nolan.)

were improved, incoming producing property and there were four of them that were vacant. I took bonds at par for the mortgage value of my property.

Q. Did you have anything to do with any other deals in these bonds?

A. Yes, sir.

Well, I induced Mr. L. S. Morrison to sell 600 acres of land that was clear of incumbrance at \$30. an acre, which was the market value of his land, for bonds at par. That is the land that was tendered the Power Company as security for rent, and that was the proposition—the purpose of getting that land was to put that up with this Power Company as security for the payment of the monthly rental for power.

Q. Did you have any connection with the deal between the gentleman who has just left the stand, just preceded you?

A. Mr. Todd?

Q. Yes.

A. Yes, I represented the purchaser.

Q. What was that deal, and what did you have to do with it? And state the time, the date.

A. That was March 18th, 1911. That was a lot 60 feet by 111 on Fourth Avenue, within a block and a half of the new 42 story Smith Building there, and it was sold at \$75,000. for Columbia River Orchard bonds, and it was a low price for the lot.

Q. Go ahead.

(Testimony of H. P. Nolan.)

A. This lot is directly across the street from two lots the City of Seattle paid \$85,000. apiece for, for their own use. That is where they are going to build a court house; that is across the street from this lot.

Q. Go ahead.

Q. Well, Mr. Todd sold that lot for \$75,000.

Q. What did he take in payment?

A. Columbia River Orchard bonds.

Q. At what valuation?

A. Par.

Q. Now did the personal attorney for DeLarm and the Orchards Company, Mr. Green, hold any of these bonds?

A. Well, the only knowledge that I have that he did is that he loaned DeLarm \$2,000. in cash, and *took* Columbia River Orchard bonds as security for the note. I have a copy from the United States Court of Seattle—certified copy, with a copy of the note and copy of the bonds, that was Mr. Green's claim against the bankrupt. I think it was March 20, 1911. It *was* March 20, 1911.

Q. And the amount of it ?

A. \$2,000.

Q. What other transaction about this time were you personally acquainted with, in which bonds were taken for properties, at par?

A. Well, I had several dealing with Mr. Howe who was on the stand, in which Mr. Howe traded in

(Testimony of H. P. Nolan.)

property for, bonds. I had some other dealings with Mr. *How*, where I traded him property for bonds. They were a common medium of exchange in the City of Seattle during the months of February and March.

Q. At par?

A. Yes, sir.

Q. Were you the special and authorized "totor" for DeLarm & Company, or in the general business?

A. I was in the general business of handling stocks and bonds and real estate.

Q. You had no peculiar relation to him or to the company?

A. No.

Q. Was anybody else connected with you in the dealings—in Mr. Todd's dealings?

A. Oh yes, there were several brokers and individuals.

Q. Well, name some of the individuals of standing there?

A. Well, T. C. Nutter of Nutter and McLean, and United States Marshal up there, Mr. J. R. H. Jacoby.

Q. Were they men of good integrity and business standing of Seattle?

A. Oh, yes.

Cross Examination.

(Questions by Mr. WOODCOCK.)

Q. How do you brokers do when you get bonds? Do you investigate the backing of the bonds, and find out whether they are good or not?

(Testimony of H. P. Nolan.)

A. Why, certainly. Before any reputable broker handles a bond, he finds out who issues it, and what is behind the issue, duration of the bonds, and a lot of things.

Q. What did you do now as a broker, knowing your custom, as you said, to determine what was behind these bonds?

A. I didn't in this case what I do in all cases, sir, and that is to refuse to handle the bonds without a signed statement of the company that issues them.

Q. Well, now, do you depend on that alone?

A. No, I didn't in this case.

Q. What did you do in this case?

A. I inquired from several sources; the Washington Trust Company of Seattle, who was trustee of the Columbia River Orchard Company, prior to their organizing the company of Portland, and they told me that the interest on the previous issue of bonds was being paid in gold.

Q. Now, a trust company you know from experiences, usually certifies the bonds?

A. Yes.

Q. Did this Washington Trust Company certify to any of those bonds that you held?

A. No; they certified to the first issue of bonds that were eight per cent, and this company withdrew that issue and bought those bonds in order to put out smaller interest bearing bond of seven per cent.

(Testimony of H. P. Nolan.)

Q. Well, they didn't certify to any of the bonds you had, did they? That you handled?

A. No, no, sir.

Q. Well, you knew then that they had quit acting as trustee?

A. Oh, certainly; there was no question about that.

Q. Did you know why they ceased to act as trustee?

A. No sir; they made no statement as to why.

Q. Was the title then of this property that the Orchard Company claimed to own investigated by you, or anybody whom you represented, to see whether they owned it or not?

A. I didn't go that far. My attorney examined the papers, the incorporation. Mr. Cook examined the papers of incorporation, copies of which were submitted to him, and copies of which are in my possession.

Q. As a matter of fact, you learned afterwards, when the bottom fell out of this corporation, that they didn't own anything up there of any substantial value, except some equities in properties, and what interest they might have in the ditch and pumping plant?

A. Yes, I found out all that had been known, and I was subpoenaed before the Grand Jury here in Portland a year ago last February.

Q. You have found out, though this: That at the time these bonds were being handled there at par, as

(Testimony of H. P. Nolan.)

a matter of fact they were not worth anything like par?

A. Oh no; they were worth par, and were so accepted at par.

MR. WOOD: Immaterial, irrelevant and incompetent, what he found out after the date of the transaction.

A. Well, if I had known they were worth nothing I wouldn't have sold my property for them, sir.

Q. Hasn't it turned out - - -

MR. WOOD: I object.

Q. (Continuing) That they were not at that time—not the value you put on them or somebody else—but hasn't it turned out to your knowledge, that there wasn't sufficient securities behind the bonds even at that time?

COURT: Let him answer the question.

A. I investigated the bonds, as I thought, very thoroughly, and I was satisfied with what was purported to be behind the bonds, and I actually sold my property for the bonds.

Q. What I am getting at is whether you had any personal knowledge as to what titles they owned up there, that they represented they did own?

A. I have not, sir.

Q. What interest they had?

A. I have no personal knowledge, sir.

Q. You don't know anything about that?

A. No, sir.

(Testimony of H. P. Nolan.)

Q. But you know finally what became of the bonds, and how they terminated, as to the other people?

A. Well, I have got about \$20,000. of their securities in the safe deposit in Seattle now.

Q. Of their bonds?

A. Their bonds and their land contracts.

Q. You know what they are worth now, the bonds?

A. They are worth so little, sir, that I wouldn't offer them for sale nor sell them to anybody.

Q. Now, at the time you were negotiating the bonds, you real estate gentlemen down there in Seattle, it was all done in land values. You were not selling for cash, were you?

A. I never sold one for cash, sir. Just let me change that answer. I did sell two of *bonds lots* for cash. They were seven per cent bonds.

Q. Well, generally down there, from what you determined about them—you say they were worth par value, was where you were using for trade—trading one piece of property for another?

A. Yes, sir.

Q. They were not handled by the banks or anybody on the market for cash?

A. No.

Q. Not exchanged for cash?

A. No, the banks didn't handle them for cash.

Q. Now, the bonds that you got. Did you get them directly from the company itself?

A. No, I told you I got some from Mr. Howe, and

(Testimony of H. P. Nolan.)

I got them from several brokers. Why, I would call them up over the phone and tell them I was offered certain property at a certain price the same as I have called the Trustee Company or other concerns that have local offices there, and told them that I could trade certain property for their stocks or their bonds at a certain price; and the price was real estate, so and so. Do you want it?

Q. In doing that, you were acting then you say, as agent for the Columbia River Orchard Company. That is, you might say a self constituted agent. You would call them up?

A. You can put it so if you care to. I am a broker there and trade in bonds.

Q. What previous arrangements did you have with the Orchards Company to that? That you could handle their bonds, or how did you come to figure on that?

A. Each transacton would come on as a brokerage. Is that the point you want, sir?

Q. Yes, I want to know the relations between you and the company and how you came to handle the bonds, and the arrangement.

A. Just as open broker for a brokerage.

Q. That is, you were not a regular agent for them?

A. No, I don't know that they had any.

Q. Each broker in Seattle was doing as you did; that is, whenever they got a chance to exchange a

(Testimony of H. P. Nolan.)

piece of property for some bonds, they would call on the company for bonds?

A. I can't say that they did. I presume they did, sir. But that is what I did.

Q. And you got your regular commission for doing that from the company? Get any pay from them for handling the bonds?

A. On some of the deals I did get pay in bonds.

Q. What did you take it in money or bonds?

A. I have been paid some cash.

(Questions by Mr. WILLIAMS.)

What was the date of that 600 acre transaction?

A. February 17, 1911

Q. Now, you said that that was purchased to be used as security for the contract of the Pacific Power & Light Company?

A. Yes, sir.

Q. Do you know why they wouldn't accept that as security for the contract?

A. No, I don't. That was 500 acres of land that was clear of any incumbrance.

Q. Do you know that they didn't accept it as security?

A. Yes, I have heard that.

[Testimony of Everett Smith, for the
Defendants.]

EVERETT SMITH, witness called on behalf of defendants first being duly sworn, testified as follows:

(Questions by Mr. ERSKINE WOOD.)

Resident of Seattle, lived there 28 years. I am one of the Superior Court Judges of Seattle, have been such fifteen months. I began the practice of law in Seattle in 1885—28 years ago.

Q. Do you know the defendants C. A. and E. C. Kilbourne.

A. Yes, sir. I have *know* Dr. Kilbourne, for 28 years, and known C. A. Kilbourne *comething* over 20 years.

Q. Are you familiar with their general reputation in Seattle? for integrity and business honesty?

A. Yes, sir.

Q. What is it?

A. Why, for integrity and truthfulness and fair dealing, they stand very high.

[Testimony of J. G. Blake, for the Defendants.]

J. G. BLAKE, witness called on behalf of the defendants, being first duly sworn, testified as follows:

(Questions by Mr. C. E. S. WOOD.)

Reside in Berkeley, California, have resided in Seattle, from the first of August, 1889 to the first of February 1907. I am general superintendent of the Pacific division of the Postal Telegraph system. For the first 13 years I was manager of the Seattle office and the last five years, superintendent of the second district of the Pacific division.

Q. Do you know the defendants in this case. Dr. E. C. Kilbourne and C. A. Kilbourne.

A. Yes, sir. I have known Dr. Kilbourne, since either August or September 1889, and the other Mr. Kilbourne, I think about '95.

Q. Do you know their general reputation in Seattle, for integrity and honesty.

A. Yes, sir.

Q. What is it, good or bad.

A. Very good.

[**Testimony of William McKenzie, for the Defendants.**]

WILLIAM McKENZIE, witness called on behalf of defendants, being first duly sworn, testified as follows:

(Questions by Mr. ERSKINE WOOD.)

Am in charge of the mortgage loan department Balfour Guthrie & Company. Must be 30 years that I have been in charge of that department. They are engaged in loaning money over the wheat sections of the northwest. Made a loan on what is known as the Tobey Brothers ranch to the Kilbournes, early in 1911. Got a report from our regular appraiser as to the value of the land for the purpose of the loan.

Counsel for plaintiffs objected to witness stating the value placed on the land by his appraiser.

Adjourned, until 10 o'clock A. M. tomorrow morning.

Monday, May 19, 1913, 10 A. M.

[Testimony of Charles A. Kilbourne, for the
Defendants.]

CHARLES A. KILBOURNE, one of the defendants, being first duly sworn, testified in his own defense as follows:

(Questions by Mr. WOOD.)

Am one of the defendants in this case. Practically no relation at all to E. C. Kilbourne. If we go back far enough *er* can probably find the connection but it is several generations back.

I first met Dr. Kilbourne, when I came to Seattle in 1889, when I was a boy. I went to work for him originally, Have known him ever since and been associated with him in business ever since.

Kilbourne & Clark Company, is a corporation, which was organized in 1901 for the purpose of engaging in business *in* dealing in electrical machinery and electrical supplies building electric plants, pumping plants and kindred lines of business.

Have been in Seattle, nearly all the time since 1889. I think there were about eight stockholders all together (refering to Kilbourne & Clarke Company) at the time we entered into this Orchard Company contract for the pumping plant. The Kilbourne & Clark Company, were building quite a number of plants at the time, lots of them, all along the Columbia River, or in that neighborhood. One was the Longview Orchard Company, one was the

(Testimony of Charles A. Kilbourne.)

Cohasset Irrigation Company, Murdock & Phreny was another. Probably a half dozen more I could name.

I was president and treasurer of the company and had more particular charge of the accounting and financial end of the business. Dr. Kilbourne, was the general manager, having in charge the sales and operation end of the business.

Q. What did you personally have to do with the DeLarm Orchards contract.

A. Very little as a matter fact I was in New York City, at the time the contract was entered into, returned in January, about January 7th, when I was told that the Company had secured a contract with that concern, the Columbia River Orchards Company. I had nothing to do with drawing the contract. Mr. Simpson, our chief engineer, had that in charge, I think, and later on, Dr. Kilbourne, entered into it. He was away also.

Q. Did you have anything to do with the execution of this contract, other than furnishing the funds?

A. No, I think my first point of contact with DeLarm and the Columbia River Orchard Company, was to go to his office within a few weeks after the contract was signed for the purpose of ascertaining the financial standing of the company, whether we were justified in going ahead with the work; payments were to be made in such a way that

(Testimony of Charles A. Kilbourne.)

we couldn't apparently get in very deep anyhow, but as a matter of ordinary business precaution I went up there, I think, with Dr. Kilbourne at the time. Yes, I am sure he was with me.

Q. What did you ascertain?

A. Had some general talk with Mr. DeLarm in his private office. He explained about the plan and scope of his enterprise, and further, either that day or the next day, said—yes, the following day, said the statement was not ready—the next day a statement was shown to me purporting to represent the assets of the company at approximately \$960,000, and on the letter head—

MR. WOODCOCK: Is that in writing?

A. It was in writing. I had the statement. I am not able to find it at the present time. I hunted very carefully for it, before I came down here. I haven't seen it for a long time. I haven't seen that statement since—it is probably over two years, but my recollection is, it calls for assets of about \$960,000, and in the liability side, showed an authorized bond issue of \$300,000, and some small amount, much smaller amount, \$16,000, possibly, as I remember it now—I may be wrong as to the exact amount, though—due the state on purchase of school lands, and about \$3,000. in open accounts. Just current running accounts; so that it left \$600,000. as the approximate net assets of the company.

Q. Did you at any time, then or thereafter, see

(Testimony of Charles A. Kilbourne.)

any security or get any list of securities. Do you know anything personally about that?

A. Nothing whatever except that Dr. Kilbourne had—or said to me that he had a list of securities.

Q. Do you know anything yourself about this bond issue, or did you make any inquiries about it?

A. Absolutely nothing. The only thing I knew about it was what Mr. DeLarm told me. They had an authorized issue of \$300,000. and had at that time telegrams and letters which were apparently authentic, indicating that the issue was practically sold in Chicago.

Q. Did he show you those?

A. Yes, I read them myself, and was satisfied that if he hadn't the money then, he would have in a few days. And with that understanding, we authorized the going ahead with the contract.

Q. Now, when did payment stop on that contract, and when did you shut down on it? That is already in evidence. Just briefly state it.

A. Well, the payments really hardly started, you might say; we went ahead with the work anyhow, and had proceeded to a point where we had, perhaps \$10,000. in and considerable payment was due; \$5000. then and \$5,000. the following month as I recall it. Then the water in the river began to rise so rapidly that we discussed the matter, and concluded, after talking with Mr. DeLarm, and his making a showing that very soon he would have the

(Testimony of Charles A. Kilbourne.)

money anyway, we concluded for our own protection, the safest thing to do was to go ahead with the work, and protect it against the rising water, and in doing that we became involved to the extent of about \$43,000., or more, I guess it was at that time; perhaps ran up to \$47,000. leaving with the credits a net amount of forty two or forty three thousand dollars.

Q. Then you stopped and shut down?

A. We shut down the work then because it was safe to do so. Put a watchman in charge.

Q. After giving all credits for all sources, what balance was left due you after you shut down?

A. Well, at the moment of shutting down, I don't recall just what it was, but the books will show that the net amount due from the Columbia River Orchard Company to Kilbourne & Clarke Company was forty two thousand three hundred and some odd dollars.

Q. Have you the books here in court?

A. Part of the books; I think all that are essential. The ledger of Kilbourne & Clarke Company, which shows the balance due, and there is a statement there in it, I think.

Q. I don't care to go into it, but I offer the books to opposing counsel.

A. On page 131 you will find the balance. There is also a statement there of date February 28, 1911,

(Testimony of Charles A. Kilbourne.)

which practically corresponds with the face of the ledger.

Q. Had you personally made any advances to the Kilbourne & Clarke Company, to enable them to carry on this and other work?

A. Yes, I had.

Q. To what amount—what extent?

A. At the time the Kilbourne & Clarke Company went out of business the first of 1911, the balance due me, as shown by the ledger and the statement, was \$73,000. and a little over.

Q. Why did the Kilbourne & Clarke Company go out of business?

A. Well, for the last two or three years they had been engaged principally in constructing irrigation and pumping plants not the ditch plant, merely the machinery part of it, and the market for irrigation securities was apparently so bad, had become so bad, that most of the companies for whom we were doing work were in financial straits. They couldn't sell their securities, and they couldn't pay us, and we could no longer continue in business, and I was not able to put up any more money, and didn't feel inclined to do so anyhow, so when this Columbia River Orchard job got in bad shape, we decided the best thing to do was to go out of business entirely, and merely to finish up the work we had on hand.

Q. Did you do that?

A. We finished up the work, and paid every dol-

(Testimony of Charles A. Kilbourne.)

lar the Kilbourne Clarke Company owed, with the exception of the balance due the Puget Sound Bridge & Dredging Company, and for which we furnished adequate security.

Q. What do you know about this Tobey ranch? About Dr. Kilbourne's investigation of it and experting of it, and finally about the acquisition of it?

A. My first point of contact with that was when Dr. Kilbourne came into my office and said that DeLarm had just left him, and told him that he had another irrigation scheme down in Oregon, and wanted him to go down and look at it.

Q. Let me interrupt you. Can you give approximately the date of that?

A. Well, I didn't look it up or try to fasten it definitely, but it was in the early part, or middle, perhaps of February, 1911. I asked him what DeLarm wanted with another scheme when he hadn't got through with this one. Dr. Kilbourne said that DeLarm wanted him to go down and examine the property. Well, Dr. Kilbourne, went to Oregon with Mr. DeLarm to look at the property, and returned to Seattle, and made a report to me on it. That he had examined the property and agreed that it was a feasible irrigation proposition if it were properly handled, and that he understood that Mr DeLarm, had a contract on the land. Some days went by, and Dr. Kilbourne came to me again, and we talked over the matter. He said that Mr. DeLarm, had

(Testimony of Charles A. Kilbourne.)

offered him this land, offered to have this land *deed* to him as security for our claim.

Q. Well, what did you say?

A. Well, I didn't like the proposition very well, but after talking it over, we decided it was perhaps the best thing to do because it would enable Columbia River Orchards Company to go ahead with their proposition, and perhaps we could work out our own affairs just as well by holding the land as security. So it was decided that Dr. Kilbourne should take a deed to it. He then went to Portland, on the 14th day of March, and returned a day or two later, stating that the land had been *deed* to him but that he hadn't received the deeds yet, but that he had been to Balfour Guthrie, and made arrangements for a loan there and authorized the delivery of the deeds to Balfour Guthrie. A few days subsequent to that, DeLarm came to Dr. Kilbourne's office, and they sent for me, and we had a discussion as to the affairs—condition of our account, and as to how it should be settled. And at that time we made a definite arrangement that the Kilbourne & Clarke Company should take over the land in payment of this account, providing DeLarm would do certain other things which he agreed to do. It was agreed that we should accept the land in payment of our claim; that we were to finish the second unit, which was estimated to cost about—I should say, we were to finish the plant, which was estimated to cost

(Testimony of Charles A. Kilbourne.)

about seventeen—sixteen or seventeen thousand dollars. Then we were, upon a certain given notice, to construct the second unit of the pumping plant, estimated to cost about \$10,000. DeLarm on his part, for his company, was to furnish \$7500. to be paid to the Puget Sound Bridge & Dredging Company, who had agreed to release its lien of \$22,000. upon payment of that \$7500. and hold other securities for the balance, and in addition to that \$7500. the DeLarm Company was to assume and pay off a claim of the Moran Company in Seattle, amounting at that time to about \$2200. These matters were all agreed to between us and settled subsequently upon that basis. After DeLarm had gone, I talked the matter over with Dr. Kilbourne, and decided that I would take for my claim against the Kilbourne & Clarke Company—c—

Q. That is for those advances?

A. For the advances which I had made personally; I would take the land for my claim, and would credit the Kilbourne & Clarke Company on the account whatever they had put into it, whatever it had cost them, plus their profits, so the Kilbourne & Clarke Company would receive the entire benefit to that point.

Q. You don't pretend in this case that you took this title from Dr. E. C. Kilbourne except as he took it; that you were interested in it from the start, and you knew what he knew about it?

(Testimony of Charles A. Kilbourne.)

A. Oh, certainly I did. I will say this also; That it was agreed in my finally taking over the land, that Dr. Kilbourne was to have a certain interest in it, in proportion to the amount of money which he himself had coming.

Q. Who was to finish up the job—the Kilbourne & Clarke Company, or you two men?

A. E. C. and C. A. Kilbourne were to finish the work.

Q. You said, If I recollect rightly, that the Kilbourne & Clarke Company was to take the land.

A. They were to take the land. Originally the land was placed in Dr. Kilbourne's name as security for the Kilbourne & Clarke Company—that was pending adjustment as to how it would be taken over. It wasn't known definitely at that time we would take the land at all. That was arranged a few days later between DeLarm and myself.

Q. But Kilbourne & Clarke Company did not take the land?

A. Not as a company, no.

Q. You and Dr. Kilbourne took it?

A. Yes.

Q. Why was that?

A. I don't quite understand. Of course the title was taken in Dr. Kilbourne's name to cover the claim of the Kilbourne & Clarke Company for the work performed.

Q. I know that, but I am trying to distinguish

(Testimony of Charles A. Kilbourne.)

now between Kilbourne & Clarke Company, and you and the Doctor. You said that Kilbourne & Clarke Company was to take the land as a corporation?

A. Yes, sir.

Q. But they didn't do it?

A. Oh, it was never taken in the name of the corporation, no.

Q. Why not?

A. It was much more convenient to take it in the name of Dr. Kilbourne, and because—well, just a logical way to handle it, anyhow.

Q. And you and Dr. Kilbourne—what I am trying to get at—satisfied the creditors of the Kilbourne & Clarke Company?

A. Oh, absolutely. Paid every claim of every kind, nature and description. I would do that anyhow, if my name was connected with a company. I wouldn't allow anything open.

Q. Now, what did you have to do with this loan, the Balfour Guthrie loan, personally?

A. I had nothing to do with the loan until after I took title to the property. I went to Portland on the night of the 27th day of March. On the 28th day of March, I think it was, I received the deed; I received the deed on the 28th day I think it was. I made an application for a loan to Balfour Guthrie, for \$20,000.

Q. Was that your application?

A. Yes, sir.

(Testimony of Charles A. Kilbourne.)

Q. I thought you asked for more?

A. No, I signed an application for \$20,000 because I couldn't get any more on the loan. They would only appraise at \$52,000., and that is all they would advance.

Q. What did you do with that money?

A. We used the money in the construction of the balance of the plant.

Q. You put it all—

A. Mostly.

Q. How much of it.

A. \$17,000. and over.

Q. Have you a statement of that \$17,000 itemized?

A. Yes, I prepared such a statement.

Q. Together with the checks and vouchers?

A. Yes, sir.

MR. WOOD: I offer the itemized statement taken from the books of the company, with the vouchers.

MR. WOODCOCK: Do they come from these books, this statement? Where are the books?

A. The payments were not made by the Kilbourne & Clarke Company mainly. Of course, they were made by E. C. Kilbourne, and by an account which we carried as the Kilbourne Company, and by E. C. Kilbourne, personally, many of them.

MR. WOODCOCK: Where are the books?

MR. WOOD: Those are the original pay checks. I don't see what you want better than that.

(Testimony of Charles A. Kilbourne.)

Q. What books of account are these from?

A. I will state that these payments were made through various accounts. Might have been part of them paid by the Kilbourne Company, which was the name we carried on the partnership at the ranch.

Q. Not the Kilbourne Clarke?

A. No, the Kilbourne Company. That was a partnership composed of Dr. Kilbourne and myself; and an account as the E. C. Kilbourne and C. A. Kilbourne. Many of the accounts were paid through a checking account with the Dexter Horton Bank, and quite a number paid by my own personal check. The checks themselves will show.

MR. WOODCOCK: Did you keep a book account?

A. No, the book itself.

MR. WOODCOCK: What I mean, did you keep a book account showing the expenditure of that \$17,000., showing how it was expended, and to whom it was expended?

A. Yes, that is all shown by these different books.

MR. WOODCOCK: I ask if you kept a book of it?

A. Not in one single book. No, sir, wouldn't find it that way.

MR. WOODCOCK: Didn't keep a separate book?

A. Didn't keep a separate book, no. Just passed through the ordinary account in which we were doing business at this time.

(Testimony of Charles A. Kilbourne.)

MR. WOODCOCK: I don't think that statement would be competent.

MR. ERSKINE WOOD: The statement isn't offered in evidence. It is offered to you for your information.

MR. C. E. S. WOOD: All right. You can have those books.

A. I will say these cash books are our own private books, containing all our records of every kind, including my personal affairs. You can have them, however, if you want them.

MR. WOOD: I would rather in a case of this kind, let them have anything they want.

MR. BRYSON: We would like to have the book account from which the statements are made up.

MR. WOOD: All right, you can have them. We will give you the books.

Q. Where are the books?

A. I think you will find them in the case, Doctor.

Q. Have you them, Doctor? (To Dr. Kilbourne)

WITNESS: That is the Kilbourne Company, the other case. (To Dr. Kilbourne.) (Books produced.)

Q. Just find the one that the statement is taken from, the different ones. You say this statement, copy of which was furnished to counsel, was made up from the various sets of books.

A. Made up from the cash books.

Q. One was the cash book of yourself personally?

(Testimony of Charles A. Kilbourne.)

A. Yes, sir.

Q. One was the cash book of yourself and the doctor, acting under the name of the Kilbourne Company?

A. Yes, sir.

Q. And what was the other?

A. The other is the firm of E. C. and C. A. Kilbourne.

Q. The cash book of E. C. and C. A. Kilbourne?

A. Yes, sir; most of the records in that latter book are connected with the office building which we operated in Seattle.

Q. Which one of these books would have most of the items in, as far as you know?

A. I think the largest account would be in my personal book and the greatest number of items would appear in the Kilbourne Company book.

Q. I show you cash book, and ask you whether that is the cash book of the Kilbourne Company?

A. Yes, it is.

MR. WOOD: I don't want to offer these in evidence and leave them here, but I offer them to counsel for examination.

MR. BRYSON: You have no ledger account?

MR. WOODCOCK: We don't know how to examine them. It would take a book expert to do that.

Q. What have you in the way of ledger index to these books?

A. We didn't keep a regular ledger account for the finishing of this contract, for the reason that it wasn't necessary for us to account to anybody for

(Testimony of Charles A. Kilbourne.)

any exact items We were to finish the plant, and the cash books are a great deal better evidence than the ledger would be, for they are the books of original entry.

Q. I will show you a book, and ask you if that is the cash book of E. C. and C. A. Kilbourne?

A. E. C. and C. A. Kilbourne.

MR. WOOD: I offer that. I offer that to counsel for examination.

Q. Is this your own personal cash book, practically?

A. Yes, sir; Charles A. Kilbourne private cash book.

MR. WOOD: I offer that to counsel.

Q. Now, have you produced here in connection with this account, the vouchers and checks which make up the items of the account?

A. Yes, sir; most of them are there. There may be two or three missing. In a hurried search I wasn't able to find all of them quite.

Which counsel have in their hands?

A. Yes, sir.

MR. WOOD: I offer this statement for the convenience of the Court, together with the original vouchers which verify it

Statement marked "Defendants' Exhibit T."

Vouchers marked "Defendants' Exhibit U."

A. I will say since that statement was made up, in searching for these vouchers, I found some ad-

(Testimony of Charles A. Kilbourne.)

ditional items, amounting to perhaps \$1,000., but I didn't change it, of course.

Q. That would swell the statement?

A. That would swell the amount, yes. It goes more than that estimate, but - - -

Q. Then, what did you have to do with this Wakefield loan, and personally state what you know about it. Under the Clapp mortgage. State what you personally had to do with it.

A. I think it was in September, or October, of the year 1911, about the 27th or just prior to that, DeLarm came to our office—came to my office with Dr. Kilbourne. Our offices were not at that time together, although in the same building, and stated that he would be able to negotiate a second loan on the ranch if we would be willing to give it, of which he would take \$10,000., and release us from the liability to construct the second unit, of the plant. The entire loan to be for \$17,500. and inasmuch as he had not been able to raise the \$7,500. to pay the Puget Sound Bridge & Dredging Company, there would be \$7500. available out of the mortgage to apply in that direction; and that if we would turn that over and get the lien released, that he would then pay it back from other sources.

Q. This was to attempt to carry out his agreement to pay that \$7500?

A. To pay them the \$7500.

Q. What was done in that connection?

(Testimony of Charles A. Kilbourne.)

A. The same day, I think, in the afternoon, Mr. Wakefield, J. Alexander Wakefield, an attorney in Seattle, with offices in the Alaska Building, was brought into my office with DeLarm and said that he represented Cyrus P. Clapp, and H. E. Lutz; that he was making loans for them, and that this particular loan of \$17,500. he was making on their behalf, and that he would make such a loan, if, upon investigation the land and title, etc., was satisfactory. Abstracts were furnished, and in due course of time, two or three days, he brought into the office a deed and some notes, I should say a mortgage and some notes, and a chattel mortgage which I refused to sign; told him that we wouldn't under any circumstances execute a chattel mortgage because it would affect my credit in the community in which the ranch was situated; so we dismissed the matter, but they came back a little later with a proposition that they would leave out the chattel mortgage and make a straight mortgage. I think, however, there was a little point in it that we considered it to be a chattel mortgage, but it wasn't itemized in that way anyhow. The result was, I finally executed the mortgage, and Mr. Wakefield said to me, "Now in all the loans that Mr. Clapp makes, it is his custom to see first that there has been nothing placed on the record after the examination of the abstract and before the mortgage is recorded, recording the mortgage first before advancing the money. I knew that

(Testimony of Charles A. Kilbourne.)

we had the same method of procedure in the case of the Balfour Guthrie mortgage to go through, and so I turned the mortgage and the notes over to him, and he said that Mr. Lutz would take them, and at the same time he showed me an execution of an assignment to Lutz, to Clapp and Lutz, of the mortgage and he said that Mr. Lutz, would take them all, was going down to Gilliam County, Condon; as soon as they were on record, that the money would then be paid over. I will correct that, I am not sure that he said Mr. Lutz, would go. I know he did go, as a matter of fact. He said somebody would take them down. He said would be a matter of several days, perhaps a week, before he would be able to turn over the money. I said to him "as soon as they are on record, and you get back here, you are authorized to turn over to DeLarm \$10,000 for his share in the transaction, and the \$7500. you are to bring up to me, and we will go up then to the Puget Sound Bridge & Dredging Company, and secure a release of the lien.

Q. Lien on what?

A. Lien on the pumping plant of the Columbia River Orchards Company.

Q. Which you had built?

A. Which we had built. A week went by, and I rang up Wakefield's office, and asked if he had heard anything from that mortgage yet, and he said yes, they had just got word it was on record, and in a day or two the money would be paid over. I went

(Testimony of Charles A. Kilbourne.)

out of town for a few days, and when I returned, I found a surprise. The money hadn't been paid over to Dr. Kilbourne in the meantime, and I rang up again. He said, "Well, just a few days, Mr. Clapp is away. Will be away over Sunday. In a day or two more will have the money for you." I said, "I wish you would attend to this right away. It has already gone too long." Well, I went to the office of Wakefield, and then he told me for the first time that Mr. Clapp and Lutz had some kind of an arrangement on, by which they were examining the Northern Pacific lands, and they expected to furnish the money to finance the balance of the proposition, and they wished to have the whole matter go through together, and he would like, as a matter of accommodation, to wait two or three days more, and it looked reasonable enough, so I let it go, and many times after that we tried to get the money, and on one excuse or another, sickness or out of the city, he put it off, and the money was never paid.

Q. Has it ever been paid?

A. Never has been paid.

Q. What efforts did you make, when you discovered his duplicity to collect the money?

A. We took it up with the firm of McClure & McClure in Seattle, and urged them to take whatever action was necessary to collect the money.

Q. Mr. Kilbourne did you or your company, directly or indirectly have any connection with De-

(Testimony of Charles A. Kilbourne.)

Larm and his projects, other than your corporation was to build this pumping plant?

A. Never in any way, shape or manner. We knew nothing whatever of his inside affairs.

Q. Did you ever have any of these bonds offered to you in payment?

A. Never presumed to offer us any bonds at all. He knew that we were not able to carry bonds, couldn't take our pay in that way, and he never offered them.

Q. Did you know anything about the bonds, or the value of them, and if you knew anything state what it was, and what your own belief was.

A. I knew nothing about the value of the bonds. I knew they had a good proposition, and supposed there was \$300,000. authorized, and that the property ought to be perfectly good for that issue.

Q. I will ask whether you have made a statement from the books, showing the cost of operation and receipts from the ranch, and whether this paper I show you is it?

A. This is a complete statement of the earnings and expenses of operating the ranch for the two years ending March 1, 1913. That is the date on which we took it over. That is, it was about as of that date we took it over. As a matter of fact, it was later in March.

Q. What does it show for the first year?

COURT: Net result.

(Testimony of Charles A. Kilbourne.)

Q. Yes, just the final result.

A. Shows expense of operation, \$12,625.82, and total receipts, \$3,516.84. In other words, a net loss for that year of \$9,108.98.

Q. And the next year?

A. The next year the net gain was \$9190.01.

Q. Making for the two years what net result?

A. Net profit for the two years of \$81.03. On an investment of about \$75,000. I will state, however that net profit doesn't take into consideration amount paid for interest or miscellaneous expenses, but just items which are directly chargeable to operations.

MR. WOOD: I offer the statement in evidence, and offer the books for examination.

MR. WOODCOCK: Was that the three years? He hasn't read the third year.

MR. WOOD: He hasn't had it three years. The next crop will be the third crop.

Marked "Defendants' Exhibit V."

A. The statement also shows the addition to the equipment of the ranch, amounting to \$13,000.

Q. Who advanced that money?

A. I did.

Q. Personally?

A. Most of it, yes, sir. About \$11,000 of it I advanced personally. The rest we borrowed. It also shows the cost of operation per acre and per bushel.

Q. It is a complete statement?

(Testimony of Charles A. Kilbourne.)

A. It is a complete, accurate statement as far as it goes.

Q. Showing the cost of raising wheat per bushel, and the cost of operation per acre?

A. Yes, sir.

Q. And in figuring the profits and expenses, did you include this \$13,000. for added equipment?

A. Oh, no, no nothing of that kind.

Q. That is not deducted from gross receipts?

A. No.

Q. But you wrote that in as a part of your general investment?

A. That is the idea.

Q. Have you bought any other land up there since you have been there?

A. Yes, sir.

Q. What land?

A. Bought 1440 acres.

Q. From whom?

A. The man adjoining on the west, nearer the town of Olex and the railroad, from the Tobey ranch Tobey Brothers' original ranch.

Q. Nearer the railroad.

A. Nearer the railroad.

Q. From whom?

A. From T. B. Garrison.

Q. What did you pay for that?

A. Bought at the rate of \$10.87 per acre.

Q. On what terms?

(Testimony of Charles A. Kilbourne.)

A. \$2500. cash, and the balance spread over some time. I think the last of it takes out this fall.

Q. Do you know what he paid for it?

A. \$10. per acre, he told me.

Q. What in?

A. Trade. Traded other land on that basis.

Q. Have you had other lands offered you up there as low as \$10. an acre or thereabouts?

A. No sir; the lowest price that I recall now has been \$12.50 an acre.

Q. How do they compare, in situation and character of soil, with the Tobey land?

A. Oh, substantially the same. This land that I speak of, the corner lies just the other side of the fence from the Tobey Brothers' original ranch. I will state that a great deal of the land was offered to us up there, but we didn't consider it because we didn't want it. You asked what other lands I bought. There was another piece that I bought, or Dr. Kilbourne and I bought from DeLarm, adjoining on the east end.

Q. Is that the Glover piece?

A. That is known as the Glover piece, had 840 acres.

Q. Traded a lot of machinery?

A. Paid some cash, assumed a mortgage and paid the balance in machinery.

Q. And released DeLarm from the obligation he was to pay?

(Testimony of Charles A. Kilbourne.)

A. Yes, I had loaned DeLarm \$2950 and that applied as a cash payment.

Q. I will ask you if you remember being offered land by a man by the name of Knott?

A. I remember being in Olex, and meeting a man by that name, who said that he had some land up there, and he asked me—I was with Dr. Kilbourne at the time, and asked me if I didn't want to buy it, and I inquired the price. At that time he asked \$15. an acre for it. I didn't want it, and told him so; not then but later.

Q. I will show you Plaintiffs' Exhibit 140 and 141, 140 being a letter from E. C. Kilbourne, dated June 8, 1911, and all that I care for you to testify about, or call your attention to, is this allusion to Knott. Just read that over, and state what connection you had with it, and state what your recollection is. Witness read letter Plaintiffs' Exhibit 140, and counsel continued his question. Now, I show you an unsigned carbon copy, marked "Plaintiffs' Exhibit 142," for *indeitification*," which they weren't able to get into evidence when they examined Dr. Kilbourne, and I will ask you to examine that, and state whether you can remember writing such a letter.

A. I have already examined this copy.

Q. Well, then, just state - - -

A. And unless I were to see the signed original, I would say that I had never written or signed such a letter, but it is barely possible, because I recall that

(Testimony of Charles A. Kilbourne.)

in passing through Portland with my sister, on my way to California in the early part of June, that the Tobey title had not been straightened out entirely, and I couldn't get all my money from Balfour Guthrie, and we stopped over between trains, and both of us called at Mr Hodges' office and I asked *hi* if he would follow up the matter while I was gone, and urge the Tobey's to straighten out that title. And while I was there, a few minutes in his office, he called attention to a man by the name of Nott in Olex, with whom he was negotiating a trade. Nott had said to him he was going to sell his land to Kilbourne for cash. Mr. Hodges asked me if I intended to buy it. I said, "No, I didn't want the land. Now, whether he asked me to write to him we didn't care to buy the land, so that he himself, Hodges, might go on (drawing or dictating the letter himself) I don't know. I have no recollection of dictating this particular letter. It isn't my style of composition, at all, but it is possible I may have signed it. He may have dictated the letter, and asked me to sign it, but I think, however, that he probably wrote the letter and signed it and sent a copy to Seattle, as I naturally would ask him to do. I had no interest in the matter whatever, as I didn't care to buy the land and never did buy it.

MR. WOODCOCK: With the witness' statement, your Honor, we offer that letter.

MR. WOOD: I have no objection with this ex-

(Testimony of Charles A. Kilbourne.)

planation, for what it may be worth. Of course, technically, it is incompetent.

Marked "Plaintiffs' Exhibit 142."

MR. WOOD: I don't want you to complaint you haven't had the doors wide open.

MR. WOODCOCK: We are not arguing this case yet.

MR. ERSKINE WOOD: May I ask a question? Mr. W. L. Tobey, testified, Mr. Kilbourne, that you were here when the deed was delivered. It is possible he may have misunderstood the question gotten E. C. and C. A. mixed up, but that is what his testimony is. I just want to you to state whether that is true or not.

A. No, I was not there. I never met Mr. Tobey until the 28th day of March. That was the day on which I made application for the mortgage at Balfour Guthrie's *a* the day on which I signed it. The application was dated back, however, about the 15th or 16th; the only time I ever met him until in this courtroom.

Cross Examination.

(Questions by Mr. WILLIAMS.)

The Kilbourne Clark Company went out of business, you may say the first of January, 1911? They ceased to be active in business. Of course, had their affairs to close up, and was still engaged in that business, closing up.

Q. What affairs did they have to close up?

(Testimony of Charles A. Kilbourne.)

A. Collection of accounts, finishing up some work which they had on hand.

Q. What work was that?

A. Well, I don't know, that I can remember what accounts—what contract they were still working on.

Q. Did the Kilbourne & Clark Company do any kind of merchandising business?

A. Kilbourne & Clark Company?

Q. Yes.

A. Yes, sir.

Q. What?

A. They had been wholesale merchants in electrical supplies and allied lines, until about 1909, I think. They sold their business then to the Holborn Electric Company.

Q. They were out of that business when they went out?

A. No, they were not out of the merchandising business. They remained as machinery merchants, but sold their general supplies.

Q. Did they have any stock on hand January 1, 1911?

A. I think that is the date on which they finally turned over most of the lines of their machinery business to George—some firm up there.

Q. After January 1, 1911, they didn't do any of that kind of business?

A. They still had on hand some small quantity of machinery stock.

(Testimony of Charles A. Kilbourne.)

Q. When, did they dispose of that?

A. They may have some of that on hand; most of it, however, has been disposed of gradually. The part that was not taken over by their successors in that particular department. It was the intention, however, to retire actively from the business in January 1911.

Q. You say the reason they went out of business was because the market for irrigation securities was poor?

A. No, I think I didn't say that.

Q. What did you say?

A. I said the market had been poor, and the business was unsatisfactory. That was the purport of it.

Q. Did you have any irrigation schemes on hand beside the Columbia River Orchard Company, in 1911?

MR. WOOD: They didn't have any irrigation schemes on at all.

Q. 1910?

A. 1910, we didn't.

MR. WOOD: You didn't have any irrigation schemes on hand.

A. No irrigation schemes, I mean the construction of the plant, if that is what you refer to, engineering work.

MR. WOOD: These questions go in the record and the Court will, interpret the questions.

MR. WILLIAMS: I didn't intend to convey, Col-

(Testimony of Charles A. Kilbourne.)

onel, that he was interested in irrigation plants themselves.

Q. And it was on account of securities being poor in that year that you went out of business in 1910, or the first of 1911?

A. That was one of the contributing influences in going out of business; it was no longer satisfactory work.

Q. No longer profitable?

A. No longer profitable.

Q. You say you returned from New York, January 7, 1910?

A. My remembrance is that is the date. It was early part of January; I think the 7th.

Q. The contract wasn't signed until the 18th, was it?

A. I couldn't say. Probably signed by the Vice-president.

Q. Now, you say that Mr. DeLarm furnished you with a statement which showed a balance of \$600,000. of assets to the Columbia River Orchards Company. What did those assets consist of?

A. I don't remember exactly but they were listed in that statement, mostly as lands, and I think he had some sub-division of it as the kind of lands but I couldn't state positively, and perhaps he had some water mortgages in it also.

Q. Didn't the capital stock of the corporation enter into the securities largely, to make up them?

(Testimony of Charles A. Kilbourne.)

A. No, not in my mind at all. I wouldn't consider that as meaning anything unless it represented money.

Q. They had the amount of capital stock shown upon the statement, didn't they?

A. It may have been that. I couldn't tell you at this time, after two years. I *rembmer* the main features in the matter.

(Questions by Mr. WOODCOCK.)

What investigations did you make Mr. Kilbourne, about the standing of the company?

A. At the time of entering into the contract?

Q. Yes.

A. Nothing more than to call at the office of the company, as I have already stated, and secure what information they gave me there and we followed that up by going to the financial agents through whom the bonds were to be marketed in Chicago, and he practically verified what DeLarm had already said, and showed by his letters and telegrams, that the bonds were substantially as good as sold.

Q. Well, now, you were—under your contract, you were being involved to the extent of about \$43,000. That is, the original?

A. That is what it finally reached, yes.

Q. Well, you had some idea about that at the time you entered into the arrangement to do this work up there at Wahluke, didn't you?

A. Yes, sir; the idea in my mind was that we

(Testimony of Charles A. Kilbourne.)

would never at any time become involved more *than* the amount which would accrue in one month's operations. They were to pay, I think, about \$3,000; the first month, or, at the rate of \$5,000. a month, but I didn't consider that feature of the water coming up and forcing us to do more work than would normally be necessary.

Q. You are a practical engineer yourself?

A. No, sir, I am not an engineer.

Q. Well, you depended then on your engineer's statement as to what would be the *total* cost of the work?

A. Certainly *absolutely*.

Q. And you knew, to a large extent, at least, when you entered into the work about what the total cost would be, provided they made their payments as you say, along by the month or otherwise?

A. I know what the contract called for, yes, sir.

Q. Running up to something like \$40,000?

A. Yes, sir.

Q. Now you didn't make any investigation yourself, nor neither did your company, as I understand it, to ascertain whether this statement that had been put out by these people was true or not?

A. Yes, we made that investigation that I speak of, by taking the precaution of going to the firm of A. L. Funk & Company, who were acting as financial representatives of the Chicago concern.

(Testimony of Charles A. Kilbourne.)

Q. Did you investigate to find out whether they owned this land they claimed to own?

A. No, we didn't do that. We took their word for that absolutely.

Q. Now, with your experience in business, you *had have had* some experience in handling bonds?

A. No, sir. I have had no experience handling bonds. I never owned a bond in my life.

Q. You know what a bond means?

A. I certainly do, yes, sir.

Q. Now, you know where a company in your experience in business—where they send out bonds, based on real estate, where any disaster would change the status of it, and depending altogether on whether they owned the real estate or not, don't you think it would be important to examine the title to find out whether they did own the real estate or not?

A. You mean if I were going to buy the bonds?

Q. If you were dealing with institutions claiming to own property, contracting with you, where they claimed their resources consisted of real estate, as a business man, don't you think it would be your duty to investigate?

A. It might be. It would vary under different circumstances according to the degree of confidence I had in them, and I certainly had a good deal in Mr. DeLarm at that time. He impressed me very favorably in deed.

Q. After you had drifted along and done the work

(Testimony of Charles A. Kilbourne.)

awhile there, you found out they couldn't pay, didn't you?

A. Found out they didn't pay.

Q. Well, they didn't pay, and you couldn't make them pay, did you?

A. No.

Q. You found out they couldn't pay?

A. They showed at the time a very plausible reason for not paying then, but made assurances which seemed to be all right, that they would be able to pay in a very short time, a few weeks.

Q. Now, prior to the time that this Tobey deal came along, they had been selling these bonds, trading them as the evidence shows here in this case, and you heard it, and you probably knew of your own knowledge they had been trading bonds already for property there in Seattle, hadn't they?

MR. WOOD: Objected to as not proper cross examination.

MR. WOODCOCK: On what ground?

MR. WOOD: Because I didn't ask this witness anything about bonds, bond values; didn't go into that subject at all. He said he knew nothing whatever about their bonds; were never offered to his company. You can test the truth of that, but you can't come and ask him about the Seattle bond market.

MR. WOODCOCK: I think he can go into the

(Testimony of Charles A. Kilbourne.)

whole subject. He claims to be an innocent purchaser in this case.

COURT: What he knew about the bonds at that time.

MR. WOOD: I understand that question is not to that effect.

Q. (Read.)

Q. And did you know about that?

A. Well, as a matter of fact, I knew almost absolutely nothing to that effect. I knew they had been trying to sell their bonds, of course, and I knew that if they could sell enough bonds to pay for their plant, that they would then be in very excellent shape, as far as I knew.

Q. You knew, then, Mr. Kilbourne, that they had their bonds on the market?

A. I knew at all times they were endeavoring to raise money, and supposed naturally *thorough* sale of their bonds. That was the ordinary method of financing irrigation companies.

Q. And then you knew further that as far as your company was concerned, you and Dr. Kilbourne and your company, all of you, there, that were trying to do this work, and already had done some of it, that they were not realizing any money to pay you with?

A. We knew that we were not being paid.

Q. Did you know how they could get money outside of the bonds themselves?

(Testimony of Charles A. Kilbourne.)

A. No, I didn't know how they could get it outside of the bonds.

Q. Didn't you know, as a business man, that in dealings with them, they would have to depend on the sale of the bonds for the purpose of paying you?

A. They told me when they started in that is the way they expected to raise their money by the sale of bonds.

Q. They told you about their proposition to sell the bonds in Chicago?

A. Yes, sir.

Q. You knew that fell down? They didn't get the money?

A. I knew they hadn't received the money, or they probably would have paid us.

Q. Didn't you know *them* Mr. Kilbourne, up to the time that the thing collapsed, that is, during the pendency of it, the latter part of it, that they were unable to negotiate their bonds for money, either there in Seattle, or anywhere else?

A. No, I didn't know they were not able to. I knew they hadn't sold any so far for cash; that is, that I knew of; They may have sold some, but I mean to say, it hadn't been reported to me, and they still owed us money.

Q. Anyhow, you knew this thing; In order to get money, they would have to do it *thorough* the bonds—what they told you before?

A. Yes, sir.

(Testimony of Charles A. Kilbourne.)

Q. You depended on that. You depended on their statement about that, knowing from their statement that was the only method they had, as far as you knew of getting money?

A. I expected them to realize from the sale of their bonds, and pay us.

Q. Did you know of any other way they had to get money?

A. No, I didn't know of any other way.

Q. You relied upon their sale of bonds to get money to pay you?

A. I certainly figured that is the way they would get it.

Q. Now, up to the time the Tobey deal was made, you knew then that they couldn't get money through the bonds? That is, they hadn't got money?

A. I will have to say I didn't know that. I understood they had made some sales or trades in some way, so they had disposed of some of their bonds, how many I don't know. I have never been told. Just a *mer* matter of hearsay.

Q. Isn't it a fact Mr. Kilbourne, that about the time of the Tobey deal, which was made in the fore part of 1911, your company was practically swamped, as well as the DeLarm outfit?

A. No, my company was not swamped.

Q. Well, you were going out of business?

A. We were going out of business, by my com-

(Testimony of Charles A. Kilbourne.)

pany was perfectly good; not a dollar owed that wouldn't be paid.

Q. But you had concluded to go out of business because you had done business for a lot of concerns there, a lot of your business, including the DeLarm outfit, where you couldn't realize money, and you concluded it wouldn't be profitable to continue your business any further?

A. Yes. I stated that was one of the contributing causes of our going out of business; it wasn't profitable.

Q. Well, wasn't that the main cause?

A. Was one of the main causes; that and the fact that I didn't care to give my personal attention to it; had other matters.

Q. Well, Dr. Kilbourne, your partner—you heard his testimony about that? That was about as I remember his conclusion. Like any other business man would do, when you are doing business and can't make a profit out of it, can't secure the debts that are coming to you, you concluded to quit. As a business proposition, you didn't think it would pay you to go any further.

A. That is substantially correct, yes.

Q. Now, then, about the time the Tobey deal was made, that was about the condition of affairs?

A. That we were going out of business, you mean?

Q. Yes.

A. Yes, we were going out of business at that time.

(Testimony of Charles A. Kilbourne.)

Q. Now, when that deal was made, this company, the DeLarm outfit, we will call it for convenience—we all know what that means without naming these various groups—were owing you about \$43,000?

A. Yes.

Q. And up to that time, they hadn't shown any signs of life in the way of producing the money?

A. They had shown considerable signs of life, but hadn't produced the money.

Q. That is what I mean; and they had agreed to pay you by the month, and they had defaulted on that, and wasn't it known, and didn't you understand at that time, and didn't you feel that way, that they were practically broke?

A. No, I didn't figure they were broke. I thought they had the basis of a fine proposition there, and it was only a matter of being able to dispose of their securities when they would pay us, and go along splendidly.

Q. Now, you understood this much anyhow. They couldn't raise the money?

A. They hadn't raised it. That was not a good sign they couldn't raise it.

Q. They hadn't paid you?

A. They hadn't paid us, no.

Q. Now, when it came down to the Tobey deal, taking this land over, this farm, you started in there through Dr. Kilbourne. He was the first one that informed you about that?

(Testimony of Charles A. Kilbourne.)

A. Yes, sir.

Q. And you concluded that as far as you personally were concerned—in the first place, you concluded to take it to secure your company. That was the first idea, as I understand it. Now, let me state it, and see if I get your idea correctly. As I understand you, the DeLarm people were owing you this sum of money, and when you first figured on the Tobey ranch, you concluded to take it over, hesitatingly as you said for the purpose of securing you in the payment of what the DeLarm outfit owed you; that his companies that had been dealing with you, and whereby you were caused to do this work—you understand what I mean.

A. Yes, I see what you mean.

Q. I ask you whether you understand?

A. Yes, I say I understand. That is substantially the fact.

Q. That was the first idea then, to take it over for security. That is, you wanted to be protected the best way you could, like any business man would; to be protected the best way you could in what was coming to you—you might say from the Wahluke project, in the work you had done.

A. Yes, that was the idea in taking it over first, as security pending some later adjustment.

Q. Now, did you know of your own knowledge how DeLarm was to pay for this ranch?

(Testimony of Charles A. Kilbourne.)

A. No. I knew nothing about it until after he had made the deal.

Q. You didn't know then, of your own knowledge, whether he was trading bonds for the ranch, or not?

A. I didn't know it, but I certainly would assume that was the way he was acquiring it, either bonds or lands or some other.

Q. You were satisfied yourself at the time you bought the place that he didn't have the actual cash to pay for it?

A. Well, I don't believe that he did; no, I am sure he didn't now.

Q. That is, that he would either trade bonds or property, or something of that kind?

A. Yes.

Q. Now, in reference to the \$17,000., was that additional work to be done outside of the \$43,000?

A. That was additional work to be done.

Q. Now, I haven't got that clear in my mind yet, about that \$43,000. indebtedness, whether that was included in the \$17,000 or not.

A. No, certainly not. The \$17,000. was an additional amount, estimated cost of finishing the first unit.

Q. Now the \$43,000. then was the indebtedness that they had incurred against you for the work you had already done at the time the Tobey ranch deal was made.

A. The \$43,000. how is that?

(Testimony of Charles A. Kilbourne.)

Q. I say that was the work that you had already earned at the time the Tobey deal was made?

A. Yes, that was already earned.

Q. And the \$17,000., that was what you were to do extra?

A. Was yet to be done, yes, sir.

Q. And for the place, then, you were allowing the \$43,000. that would clean up the debt for the work you had already done, and the \$17,000 was to be added to that?

A. Yes, sir.

Q. Now, out of the \$43,000. for the work you had done, you were to pay this dredging Company, weren't you?

A. Out of the \$43,000.

Q. Yes.

A. Yes, sir.

Q. You were to pay that?

A. We were to pay all *out* \$7500. plus some expenses.

Q. You weren't to pay the \$7500?

A. The \$7500. was assumed by DeLarm in final settlement. He was to furnish the \$7500. and pay certain attorney's fees, and the Kilbourne Clark Company—I should say E. C. and C. A. Kilbourne, had arranged to pay the balance, and furnish adequate security for it, and the Bridge Company were ready to release the lien.

Q. Their claim was a little more?

(Testimony of Charles A. Kilbourne.)

A. Their lien was \$22,000. or \$25,000. something like that.

Q. Weren't you originally, as far as the Dredge Company was concerned, weren't you originally liable for it?

A. Yes, sir, we were back of them.

Q. They were sub-contractors under you?

A. They were our sub-contractors.

Q. And the contract between you and DeLarm wouldn't relieve your company and yourself from liability to that company?

A. No, it wouldn't relieve the Kilbourne & Clark Company from liability to the Puget Sound Bridge & Dredging Company.

Q. You had guaranteed them they would get their pay?

A. Yes, sir.

Q. Now, when you made the deal with Wakefield, when you made that mortgage, had you had much acquaintance with him?

A. None whatever, except I knew that he was an attorney. from hearsay, in practice in Seattle.

Q. Did you know of the circumstances of the deal between Wakefield and Clapp and Lutz? That is, when their papers were made, etc.? That is, did you know of it?

A. You mean drawing the mortgage.

Q. Yes.

A. Yes, I knew of that.

(Testimony of Charles A. Kilbourne.)

Q. You knew that the Wakefield mortgage was not recorded at the time it was transferred over to Senator Clapp and Lutz?

A. That the mortgage to Wakefield from me?

Q. Yes.

A. No, sir, I don't know that. My mortgage to Wakefield, and the assignment from Wakefield were put of record simultaneously, I understand.

Q. Wakefield never paid you?

A. Wakefield never paid me.

Q. You'd did this, as I understand it; This transaction, as I understood you was at the request of DeLarm. That is, you had made arrangements whereby this \$7500. was to go to the Dredging Company, and the \$2250, or whatever it was, to the Moran Company?

A. There was nothing out of the mortgage to go to the Moran Company. That wasn't provided for in this particular item.

COURT: \$10,000. was to go to DeLarm.

A. Payment for the release.

Q. I thought *the* included the two accounts, the Dredging Company to get \$7500. and Moran to get \$2250. That is the way I understood it. I may be mistaken. Do you know about that yourself?

A. Yes, sir, I do.

Q. How was that?

A. \$10,000. of the \$17,500. mortgage was to be

(Testimony of Charles A. Kilbourne.)

turned over to DeLarm upon receipt of it from Clapp by Wakefield. Then Wakefield was instructed to bring the other \$7500. to me, and I would go then to the Puget Sound Bridge & Dredging Company, and turn it over directly to them, to release that lien.

Q. Now, DeLarm had agreed before that to pay that Dredging Company personally?

A. Which? The \$7500?

Q. Yes.

A. Yes, he had; *je* had agreed to furnish \$7500. to be paid over to them.

Q. How was it you were going to pay it out of this ranch? Put a mortgage upon this ranch to pay it?

A. The reason why, was because the Puget Sound Bridge & Dredging Company were anxious for their money, and naturally they would press Kilbourne & Clark Company for it, and it offered an easy solution, then, to settle in some other way—for us to furnish the money out of the proceeds of that mortgage to the Puget Sound Bridge & Dredging Company, and then look to DeLarm to pay it from some other source. He, of course, made representations at that time, that he had certain deals pending that he would have in a few days or a short time, some other source out of which to pay it; and at the same time he was to pay the Moran Company account.

Q. From the experience you had had with De-

(Testimony of Charles A. Kilbourne.)

Larm up to that time, you had found out he wasn't very prompt in his payments?

A. Mr. DeLarm's promises were seldom carried out. Whatever he put out as statements of facts to us whenever we made any attempt to verify it, was always borne out. We never caught DeLarm in a deliberate lie, and we had a good deal of confidence in him.

Q. Well, you did find out along the line, though, that a whole lot of those statements were not true?

A. Not what he put out as statement of facts to us. Everything we investigated—for instance, when he borrowed \$3,000. from the company, he said he would have that money come back in a certain time. We went and investigated, and found it to be so. He said the Washington Trust Company was the trustee; we found that to be so. He made a great many promises that he never carried out, and still he had a way about him that up until January, 1912, I really believed the fellow was sincere and honest, and would carry out his scheme.

Q. You found out later?

A. I found out subsequently the whole affair was crooked.

MR. WOOD: It is immaterial what he found out later.

Q. Now, then, as I understand it, this \$7500. was practically to hel - - that is, in two ways; you practically loaned that to DeLarm?

(Testimony of Charles A. Kilbourne.)

A. Did it to help myself.

Q. That is—see if I have it right—in the first place DeLarm had agreed to pay you \$7500. on what we call the Dredging account, and he hadn't done it, and *they* you were responsible to the Dredging Company by reason of being the principal contractor for the \$7500., and you didn't have that money yourself to pay for it, and for that reason you got this second loan, what is called the Clapp loan?

A. Yes, sir.

Q. You got that because you didn't have the ready money, and used this place to get security, and they depending on Mr. DeLarm, or his promises, to get back and help you out, you put this mortgage on this place that you got from the Tobey's, because you wanted to be relieved from the liability you had with the Dredging Company. They were demanding money all the time from you. That is the reason you put the mortgage on; the reason you turned the \$7500. over to Wakefield—that he would do as he agreed to do, and see that that account was paid. Now, am I right about that?

A. You are right and wrong. I was not depending *upon* Mr. DeLarm in the matter. He owed us the \$7500., and this didn't change the relation at all, had nothing to do with DeLarm; it was simply to relieve the situations as far as the Kilbourne Clark Company was concerned, and the Puget Sound Bridge & Dredging Company. DeLarm really didn't

(Testimony of Charles A. Kilbourne.)

enter into the \$7500. proposition in any way, shape or manner, except incidentally it was a part of that loan out of which he was to have the \$10,000. He still owed us the \$7500. just as he did before. It would have that effect, but that wasn't primarily the reason, to help him.

MR. WILLIAMS:

Witness handed letter dated July 7, 1911, from the Kilbourne & Clark Company, by C. A. Kilbourne, President, identified as the signature of the witness marked "Plaintiffs' Exhibit 148."

We had taken over supplies from the Puget Sound Bridge and Dredging Company as late as 1911.

In June, 1911, we paid the Puget Sound Bridge & Dredging Company \$2500. They had rendered at that time an additional *bil* to us for \$1000. for attorney's fees, and an additional bill for material furnished to E. C. and C. A. Kilbourne and other matters, so I paid them \$2500.

Q. That \$1,000. rendered you as attorney's fees you have included in this bill of \$17,000 haven't you?

A. That I think is included there, attorneys fees and interest. I think something of that kind. That total amount was \$2500. and I deducted \$1500. as Kilbourne & Clark's part leaving \$1000. as the part brought about by the Columbia River Orchard Company.

Adjourned until 1:30 P. M.

(Testimony of Charles A. Kilbourne.)

Monday, May 19, 1913, 1:30 P. M.

C. A. KILBOURNE, resumes stand.

Witness' attention was called to Page 118 of the Ledger, previously produced in Court under Columbus River Orchard Company's account, and witness' attention called to the column representing the journal page.

Q. Have you brought your journals with you?

A. Nos, sir. I have here only the ledger of the Kilbourne & Clark Company.

Q. Then the items, as they appear upon your ledger are identical as those upon the statement introduced in evidence, are they not?

A. I haven't compared them myself all the way thru, they seem to have been experted by Mr. House, the Government expert who simplified and checked up the account.

Q. I hand you Plaintiffs' Exhibit 135, and ask you if the ledger doesn't exhibit exactly what is on that statement of account?

A. I am unable to say. That was compared at the time. It will take some time go thru. I would like to ask if this is our copy. There was a verified copy signed by both the Columbia River people and our own auditor—an accepted copy.

Defendants' Exhibit M, produced, is that the one you refer to?

A. Yes, sir.

(Testimony of Charles A. Kilbourne.)

Q. Now, is that exhibit the status of your ledger account?

A. This apparently brings it down to date of settlement September 22nd.

Q. And the additional statement you furnished, brings it down to the end?

A. This statement itself would not correspond exactly with the face of the ledger, for the reason that there are some adjustment entries made here, apparently later, but if it is worked out, the balance due would be the same.

Q. The additional are entered on your Exhibit K, are they not?

A. There are two or three items not in there, on this statement, which appears on the ledger. With this addition made, I think the amount would *agree* that is, the totals would agree. I haven't checked them through, all the items.

Q. Now, Mr. Kilbourne, you have turned these books over to us for our examination, but will you tell me how we can get any *more* information from your books that we have from these statements already in evidence?

A. No, sir; I think the statements are supposed to cover the situation entirely, as far as I can tell now.

Q. Now, have you a separate account with the Puget Sound Bridge & Dredging Company, or those matters between you and them that is charged in the Columbia River Orchard Company account?

(Testimony of Charles A. Kilbourne.)

A. There is a separate account with them; I am not sure that it is evidenced by a ledger account, or the unpaid vouchers on file in the company's papers. I don't seem to find it here anyhow. It may be in the book.

Q. Let me call your attention to the index 109.

A. Puget Sound Bridge & Dredging Company 109. There may be a separate account in here; I am not sure. It is quite likely, though, that it is carried as a vouchers payable account. You will find that in here in the Vouchers Payable Account.

Q. What I desire to know, Mr. Kilbourne, is whether or not your books would give us any more information about these various accounts than we find in these statements.

A. I think—the statement which is accepted up to a certain date by DeLarm for the company, and signed by our own auditor for the Kilbourne & Clark Company, that is right up to that point, and the few entries shown in the ledger since that time would finish it up as far as the Kilbourne & Clark Company is concerned.

Q. In order to find any other information about the status of these accounts, we would have to go back to your journal to find them?

A. Might have to go to the journal, might have to go to the sales ledger.

Q. Is there a separate account of Moran account in there?

(Testimony of Charles A. Kilbourne.)

A. I think that would also be carried under Vouchers Payable, general account. That also is an accepted account by the Columbia River Orchard Company.

Q. Have you a separate account with Curtis & Company?

A. No, sir, we have not.

Q. Then you have no separate accounts of any of those parties?

A. Not in the form of a ledger account here. Simply all of their accounts—their papers are vouchered by months, and written in unpaid vouchers, and carried in a general account, known as Vouchers Payable, or Audited Vouchers.

Q. Then, in order to get any more information than we have already had in these various statements, we would have to go to these various books which are not here.

A. Yes, sir; if you need any further information than that shown by the statements and *ledge* itself, I wouldn't be able to give it to you now. It is complete as it stands, as a matter of fact.

Q. Now, there was some testimony here about the Anderson account or some money received from a man by the name of Anderson. Do you remember about that?

A. No, sir, I do not.

Q. And from a man by the name of Espey or Ezra, \$1,000. or such a matter.

(Testimony of Charles A. Kilbourne.)

A. You mean a credit to the Columbia River Orchard Company?

Q. Yes.

A. If so, it would appear on the statement and the ledger as well.

Q. Didn't that come into your hands after the Tobey deal?

A. There is a credit of \$1,000. here in October.

Q. That was the Beckdorf sale, wasn't it?

A. I couldn't tell you. It doesn't specify; probably shown on that statement; doesn't show in the ledger, though, isn't itemized. Also a credit of \$350. cash on December (27), 1910.

Q. Now, isn't it a fact that you still held some securities at the time of the Tobey deal, and you received some on that later, afterwards. That wouldn't be on your account there in your ledger?

A. Not that I know of.

Q. Similar to the Burke Addition property?

A. Everything that we received has been credited.

Q. You wouldn't credit it up to them after you had taken over the Tobey ranch, would you?

A. If it was something on which we realized afterwards, we would credit them, yes.

Q. As I understand you, everything was wiped clean at the time of that transaction.

A. At the time of the transaction, yes.

(Testimony of Charles A. Kilbourne.)

Q. Anything you received afterward wouldn't be credited, would it?

A. There are some later charges, and I think some later credits, small items; however; something that had been overlooked, perhaps. You see the charges go up as late as the summer of 1911, but have nothing to do with the balance due at the time of the trade in March, 1911. I think all the credits are shown on the statement at that date.

Q. If you did have any securities at that time, then, they would belong to you on account of your agreement with DeLarm?

A. No, sir; not that I know of.

Q. You say everything was wiped clean at that time, and if you had securities, they would be yours, would they not?

A. If I had any securities, they would be, yes. That was the intention. I think everything had been cleaned up at that time, absolutely, as far as I recall now.

Mr. BRYSON: The Burke Addition property?

A. The Burke Addition property?

Q. Yes.

A. That was included in that transaction.

Q. You got that as well as the Tobey ranch?

A. Yes, sir, that was all included. I remember Mr. DeLarm speaking of that.

Q. Whatever you got from Espey, if any credit there, it was the same way?

(Testimony of Charles A. Kilbourne.)

A. If it was not already credited?

Q. Yes.

A. If it was not already credited, it was included in the transaction.

Q. Do you know anything else that was included?

A. I don't recall anything myself. I will state, however, I had nothing to do personally with this transaction. I don't know anything of the details of that. Dr. Kilbourne handled that.

Redirect Examination.

(Questions by Mr. WOOD.)

You didn't personally keep these books there, did you?

A. No, I was not the bookkeeper.

Referring to his previous testimony as to payments by the Columbia River Orchard Company, Witness said I hadn't been paid until the transaction of the Tobey ranch, then I was paid as far as the Tobey ranch paid for it, but he still owed us \$7500. and other items.

What I paid for the Tobey ranch was this—what we paid for it; the account of the Kilbourne Clarke Company, amounting to approximately \$43,000., although as a matter of fact, it was a little less; \$17,000. expended by E. C. Kilbourne and C. A. Kilbourne, in the completion of the original first unit, and \$10,000. to be expended for the estimated cost for construction of the second unit, which was done away with by a portion of the \$17,500 mortgage turned over

(Testimony of Charles A. Kilbourne.)

to DeLarm; so those three items amounting to \$69,000., would approximately cover the cost of the land to us, and if DeLarm paid back that \$7500., it would, of course, be reduced by that amount; a little more than \$60,000; he never paid it, so the actual cost to us was very close to \$70,000 at that time, not counting a lot of extras that are not in there, and interest, etc.

Q. As I understood you to say, that while the \$7,500, was to meet a debt from you to the Dredging Company, yet in the settlement DeLarm agreed to put up the money to pay that, and lift the lien from the pumping account?

A. He assumed that and the Moran account, but never paid either one of them.

Q. Now, this question that has been asked you about the Burke Addition property—what was the extent of that property?

A. The value of it?

Q. In amount, one lot, wasn't it?

A. Just a single lot in a rough ungraded section.

Q. What value?

A. A value was put on it to me of \$650., by a man living in the neighborhood. Other people have put it more. DeLarm himself called it \$1,000. in the final settlement which we had.

Q. Was that adjustment of the Burke property made before the Tobey deal?

A. No, sir. The final wind-up or settlement there

(Testimony of Charles A. Kilbourne.)

all included. The reason for leaving that in, I may say, was to cover certain items of interest, and that sort of thing, which had not been put in the statement.

Recross Examination.

(Questions by Mr. WILLIAMS.)

In your statement of that, did you take into consideration that Reinmouth property in security for the Moran account, which Dr. Kilbourne holds?

A. He still has it, and is ready to turn it over to anybody that will take up the Moran account; that is, anybody authorized to do it.

Q. You didn't take that into consideration in what you paid for the property?

A. No, that is held by the Morans really. That is, they have a mortgage on that.

E. C. Kilbourne Recalled.

(Questions by Mr. ERSKINE WOOD.)

Witness referring to the date that he had the conversation with Mr. Heaton, produced the check written that day and in answer to a question, stated: Check bears date May 19, Heaton testified that *said* it was between the first and seventh of April, and I looked at my expense account and found I arrived back in Seattle, on the 6th of April, and I said it might be along that time, but I said I didn't remember distinctly as it was not of much importance, but I remember distinctly of paying him the

(Testimony of E. C. Kilbourne.)

\$10. while he was in there; that if I could find the check book of Kilbourne & Clarke Company, I could fix the date exactly.

(Questions by Mr. C. E. S. WOOD.)

To same time I will ask some questions. I show you a letter from the Puget Sound Bridge & Dredging Company, dated January 25, 1912, addressed to Kilbourne & Clarke Company, with copy appended addressed to the Columbia River Orchard Company, and ask whether you received that letter, and whether it still remains in force?

Yes, sir. According to the terms of that letter, it was a 90 day contract, but they have renewed it, and Mr. Anderson, the one who is reorganizing the company for the bondholders, has the written statement of the Puget Sound Bridge & Dredging Company OK-d by Kilbourne & Clarke Company, that upon the payment of those sums, that the lien will be released; and also they have a statement from E. C. and C. A. Kilbourne, and E. C. Kilbourne and Kilbourne Clark Company, that as soon as that Moran account is paid, these two pieces of property, the Billings and the Reinmouth property, will be turned over to the successors of the Columbia River Orchards Company.

Q. That is the Tacoma Securities?

A. Yes, sir, never been held except as securities. That proposition was made by Mr. DeLarm and Mr. Green, in the office of the attorney for the

(Testimony of E. C. Kilbourne.)

Puget Sound Bridge & Dredging Company and signed by me as vice-president of the Kilbourne & Clarke Company, and accepted by Mr. DeLarm, as president of the Columbia River Orchards Company, and Mr. Green as their attorney.

MR. BRYSON: \$1,000. attorneys fees?

A. Yes.

MR. WOOD: With no objection, we will put this in.

Marked, "Defendants' Exhibit W."

Witness excused.

MR. WOOD: Defendants E. C. and C. A. Kilbourne rest.

Mrs. Jennie C. Koppen Recalled

(Questions by Mr. WILLIAMS.)

Being asked about the work in April and May 1911, on the pumping plant,

Witness, said: I had been told before I went that the men weren't working very much, and I took a look as I went by, and though they had about fifteen or twenty men on the works about one third of them were idle each time I went by. Sometimes more than that, because I counted them, a good many times.

Q. Did you have a talk with Mr. DeLarm, in regard to that state of facts?

A. I did.

I had a talk with Dr. Kilbourne, about the Tobey

(Testimony of Mrs. Jennie C. Koppen.)

ranch. He said it was a very good one, he was well pleased with his bargain. I asked him particularly.

M. Isabelle Forbes Recalled.

(Questions by Mr. WILLIAMS.)

Letter dated April 8, 1911, addressed to Mr. Leet, signed by George C. Hodges, identified, introduced "Plaintiff's Exhibit 149.

[E. O. Tobey Recalled.]

E. O. TOBEY, being recalled as a witness, was reminded of E. C. Kilbourne's testimony that E. O. Tobey, (the witness) was in the office of the Oregon and Washington Trust Company on the 15 of March 1911 at the time the deeds were executed, and was asked the fact was. He answered "I don't know a thing about any deeds whatever."

Asked whether he was present at any time with Mr. Kilbourne he said in substance as follows:

Why, my brother was living here in Portland, I happened to be in here, and he said they were going over to meet Mr. Kilbourne, and asked me to go with them. I had met Mr. Kilbourne, I think it was in the office of a lawyer by the name of Chamberlain, if I remember right. There were some papers that I think, I had to sign, but I don't remember whether I signed them that time or not, if I remember right, the papers were sent over across the

(Testimony of E. O. Tobey.)

river, in a Notary Public's office there. That is the first time I saw Dr. Kilbourne.

W. L. Tobey Recalled.

Referring to the time that Dr. Kilbourne, was with witness at the ranch for the examination of it, question was asked, where did they stay that night if you know.

A. They traveled with me to Arlington, that evening. I would say we got there about 7 o'clock, it was after dark, after leaving the ranch, it was quite late in the evening and driving out of the field on the south side of the ranch, we followed the county road west towards Olex, and as described, Olex lies down in quite a deep canyon, and there is just one point in going over that road, where you can look over the bank and see Olex and as we passed that, I called their attention to the sight of the town of Olex, and we drove from there towards Arlington, and I remember that was the particular time, and I remember it was intensely dark, so dark that I couldn't see to follow the road with the team, and I would say about two or three miles before reaching Arlington we came to a little shack house where there were some people camping and we asked if we couldn't get a lantern to light us into Arlington. They said no, so we had to go into Arlington in the dark as best we could.

I think, in my former testimony, I thought we

(Testimony of W. L. Tobey)

went into Portland, that night, but after considering the matter, I think we stayed there over night and went in the next morning into Portland.

Q. Dr. Kilbourne, spoke about one of the combined harvesters being an old one that hadn't been used for several years, what is the fact about that?

A. It hadn't been used, that is a part of the time that we owned it, it wasn't in use, but it wasn't used because the machine was worn out, the machine when we left the ranch was in good running order, that is capable of being used. There was one year, we didn't use it because the grain was short, and we thought we could do better work with headers, and another year, we were then engaging a man to run it, that didn't understand the work, and he made a failure of it. Mr. Wade, preferred to use a header rather than to use the combined.

Frank L. Tobey Recalled.

The night that Dr. Kilbourne and Mr. DeLarm, were out to the ranch, February 1911, I stayed in Olex, that night. I walked down from the ranch to Olex. At that time there was only one stopping place in Olex. I didn't see Dr. Kilbourne and DeLarm there, next I saw them was in Portland. We only had one combined harvester on the place. It was in good condition, other than it had been through a long season's run and of course required more or less repairing before it could be used again. The

(Testimony of Frank L. Tobey.)

harvester was in useable condition.

Q. I will ask you if, E. O. Tobey, your brother was with you in the office of Mr. Hodges, the day you made out the deeds.

A. No, sir. The only time that I remember of him being with us in connection with this business was the time we went to Mr. Chamberlain's office, there was an affidavit he was required to make out, and Mr. Chamberlain made them out, one for him and one for myself, and we signed them.

Affidavits by C. A. and E. C. Kilbourne, introduced in evidence marked "Exhibit 150, and 151.

Plaintiffs' Exhibits.**1.**

Same as Exhibit A attached to complaint.

2.

Escrow agreement; Portland, Ore Mar. 15, 1911, Received from Oregon & Washington Trust Co. & W. L. Tobey & Frank L. Tobey, the following documents which we hold in escrow subject to written instructions accompanying same. 1 package contains 1 note signed by Tobeys for \$3000.00 Columbia River Orchard bonds No. 2001 to 2010 inclusive of \$100 each amounting to \$1000 & No. 3427 for \$5000 making \$6000 in all. 2nd Package 5 deeds and 1 bill of sale to *Toby* ranch. Columbia River Orchard Bonds No. 2001 to 2020 inclusive \$100 each amounting to \$1000 & No. 3401 to 3426 inclusive of \$5000 each amounting to \$130,000 making \$131,000 in all Delivered 3|24|11 File away H. T.

3.

Letter dated Portland, Oregon, March 15, 1911, to Hartman & Thompson, Oortland Oregon, signed by O & W. E. Co. by George C. Hodges, trustee, and W. L. Tobey and F. L. Tobey, instructing bank to hold the \$6000 in bonds mentioned in Ex. 2 as security for the \$3000 note.

4.

Deed dated Sept. 22, 1911, from Northern Pacific Railway Company to Columbia River Water Com-

pany, consideration \$2894 conveying Lot 4 Sec. 3 twp. 13 N. R 25 E. of W. M. and a strip 50 feet wide across sections named and strip 25 feet wide across other sections named, Signed, witnessed and acknowledged

5.

Agreement dated May 1, 1910 between Columbia River Orchard Company (company) and the Washington Trust Company of Seattle (trustee). The company hereby binds itself to deposit in the hands of the trustee good valid and solvent securities consisting of mortgages, sales contracts, desert land mortgages, deed to real estate, bonds, securities and other collateral of the face value of \$125.00 for each \$100 of bonds issued hereunder and in like manner to deposit with said trustee and to keep in the hands of said trustee at all times, good, valid and solvent securities equal to 125 per cent face value of the total of all bonds issued by it.

6.

Water Mortgage. Virgil H. Robertson to Columbia River Orchards Co. dated Jan. 22, 1910 \$16,000; due May 1, 1911; covering N. E. $\frac{1}{4}$ of Sec 24, twp. 14 N. R. 25 E. of W. M. Desert Land Entry; Conditioned as in Ex. 42.

6a

Assignment to Col. River Orchard Co.

6b

Assignment to Washington Trust Co.

6c

Affidavit of W. E. DeLarm (See form, Ex. 47)

7.

Desert Land Mortgage, Emil F. Cords to Columbia River Orchards Company, dated June 10, 1910 \$16,000; due Oct. 11, 1912; covering E $\frac{1}{2}$ of N. E. $\frac{1}{4}$ and E. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ Sec. 8 Twp. 14, N. R. 26 E. of W. M. Desert Land Entry. Same conditions as in Ex. 42.

8.

Water contract, Frederick C. Koppen to Columbia River Orchards Company dated May 21, 1910, \$16000; due Apr. 1, 1914; covering N.E. $\frac{1}{4}$ of Sec. 4, twp. 14, N. R. 26 E. of W. M. Land owned in fee by Koppen. Same conditions as in 42 with reference to expiration.

8a and 8b.

Assignments of Ex. 8.

9.

Desert Land Mortgage, Alfred Gagner to Columbia River Orchards Co., dated Aug. 25, 1908 \$16000; due Apr. 1, 1911; covering S. W. $\frac{1}{4}$ sec. 24, twp. 14 N. R. 25 E. of W. M. Desert Land Entry, Condition same as 42.

10.

Desert Land Mortgage, Laura Wattle to Columbia River Orchards Company, dated May 17, 1909 \$16000; due May 16th, 1911; covering N. W. $\frac{1}{4}$ sec. 18, twp. 14 N. R. 26 E. of W. M.; same conditions as in 42.

10a and 10b.

Assignments of 10.

10c

Affidavit of W. E. DeLarm, Same form as Ex. 47.

11.

Received of Washington Trust and Savings Bank of Seattle, Washington, the following described papers or instruments in connection with securities held by said Washington Trust and Savings Banks, formerly The Washington Trust Co., of Seattle, when acting as Trustee for Columbia River Orchard Company and now turned over to Oregon & Washington Trust Company, a corporation organized and existing under and by virtue of the laws of the State of Oregon, said last named company having been substituted as trustee for Columbia River Orchard Company.

A promissory note of Laura Wattle and Frank Wattle to the Columbia River Orchards Company for \$16000, dated May 17th, 1909, due May 16, 1911.

Also Desert Land Mortgage executed May 22, 1909 by said Laura Wattle and Frank Wattle to the Columbia River Orchards Company on the Northwest quarter of Section 18, Twp. 14 N. R. 26 E. W. M., Grant County, Washington;

Also affidavit of W. E. DeLarm, setting forth under oath on May 7th, 1910, that he is President of Columbia River Orchard Company, and that the above mortgage is a good, valid and solvent security.

A promissory note of Frederick C. Koppen and Jennie C. Koppen to Columbia River Orchard Company for \$16000, dated May 21st, 1910, due April 1st, 1914. And water right contract for land executed by said Koppens to said Columbia River Orchard Company covering the northeast quarter of Section 4 Twp. 14. N. R. 26 E. W. M. in Grant County, Washington.

An affidavit duly sworn June 7th, 1910, of W. E. DeLarm, that he is president of the Columbia River Orchard Company, that said contract is a good valid and solvent security.

A promissory note of Emil F. Cords to The Columbia River Orchard Company for \$16000, dated May 21, 1909, due October 11th, 1910;

Also a Desert Land Mortgage from Emil F. Cords, to The Columbia River Orchards Company dated May 21, 1909, covering the North half of Northeast quarter and East half of Northwest quarter, Section 8, Twp. 14, N. R. 26 E. W. M. in Grant County, Washington.

An affidavit subscribed June 7th, 1910 of W. E. DeLarm that he is president of said Orchard Company, that said note and mortgage are good, valid and solvent securities.

A promissory note of V. H. Robinson and Gertrude Robinson to The Columbia River Orchard Co., for \$16,000 dated January 22nd, 1910, due May 1st, 1911. A Desert Land Mortgage from Virgil E. Robinson and Gertrude Robinson to The Columbia River Or-

chard Co. dated January 22nd, 1910, covering the Northeast quarter of Section 24, twp. 14 N. R. 25 E. W. M. Grant County, Washington.

A promissory note of Alfred Gagner and Salinda Gagner to the Columbia River Orchard Company for \$16000 dated August 25th, 1909, due April 25th, 1911, and a Desert Land Mortgage from said Alfred and Salinda Gagner to said Orchard Company dated August 25th, 1909, covering southwest quarter of Section 24, Twp. 14 N. R. 25 E. W. M. Grant County, Washington.

Affidavit subscribed August 19, 1910, of W. E. DeLarm, that he is the president of said Orchard Company and that said Desert Land Mortgage is good, valid and solvent security.

Receipt also covers assignments of said instruments and all notes endorsed over without recourse.

Portland, Oregon, March 28, 1911.

OREGON & WASHINGTON TRUST CO.

By George C. Hodges, Trust Officer.

12.

State of Washington,
County of King,—ss.

W. E. DeLarm, being first duly sworn, on oath says: that he is president of Columbia River Orchard Company, a corporation organized and existing under the laws of the State of Washington; that the Desert Land Mortgage hereto attached covering Desert Land Entry No. 01079, is a good valid and solvent security.

W. E. DeLARM.

Subscribed and sworn to before me this 7th day of May, 1910.

GEORGE A. CUSTER,

Notary Public in and for the State of Washington,
residing at Seattle.

(Seal)

12a

Same form as Ex. 12 covering Emil Cords mortgage dated June 7, 1910, Desert Land Entry No. 1177.

12b

Same form as Ex. 12 covering F. C. Koppen mortgage N. E. $\frac{1}{4}$ Sec. 4, Twp. 14, N. R. 26 E. W. M.

12c

Same form as 12.

13.

Letter dated February 3, 1911 to Washington Trust & Savings Bank, Seattle Wash.

We acknowledge receipt of yours of Jan. 31st, in which you resign as trustee for the Columbia River Orchard Company, under trust agreement of May 1st, 1910.

Kindly assign and turn over all securities and papers which you may have in connection with such trusteeship to the Oregon & Washington Trust Company of Portland, Oregon, who we have appointed to accept such trust. We hereby accept your resignation.

COLUMBIA RIVER ORCHARD COMPANY,

By W. E. DeLARM, Pres.

Attest: A. J. Biehl, Secretary.

14.

Letter dated Seattle, Wash., Feb. 7, 1911 addressed to Columbia River Orchard Company.

Your favor of the 3rd inst., received and enclosed find copy of letter of even date to the Oregon, Washington Trust Company of Portland, Oregon, which explains itself.

J. H. EDWARDS, Vice president.

15.

Letter dated Seattle, Washington, Feb. 7, 1911, addressed to Oregon Washington Trust Company, Portland, Oregon.

We have resigned as trustee for the Columbia River Orchard Company under trust agreement of May 1st, 1910. Said company is asking us to assign and turn over all securities and papers in connection with said trusteeship to you, stating that you have been appointed to accept such trust. If you will kindly execute in proper form your acceptance of said trust and have same recorded in Grant County, Washington, and forward us a copy of said acceptance, certified by the recorder of said county, we will then be glad to take up with you the question of transferring the securities we hold in connection with said trust.

J. H. EDWARDS, Vice president.

17.

Assignment by Washington Trust and Savings Bank to Oregon and Washington Trust Co., dated March 16, 1911, the following instruments:

A certain desert land mortgage dated May 22, 1909, made and executed by Laura Wattle and Frank Wattle, her husband;

A certain water right contract dated May 21, 1910, made and executed by Frederick C. Koppen and Jennie C. Koppen, his wife;

A certain desert land mortgage, dated May 21, 1909, made and executed by Emil F. Cords, a bachelor;

A certain desert land mortgage dated January 22, 1910, made and executed by Virgil H. Robinson and Gertrude Robinson;

A certain desert land mortgage dated August 25, 1909, made and executed by Alfred Gagner and Salinda Gagner, it being intended hereby to substitute the party of the second part in lieu of the party of the first part as trustee under a certain trust agreement dated May 1, 1910, wherein the Columbia River Orchard Company is party of the first part and the Washington Trust Company of Seattle, (Now known as The Washington Trust and Savings Bank) is party of the second part.

Acknowledgment attached.

By J. H. EDWARDS, Vice president.

Attested and seal attached.

18.

Letter dated Portland, Or., Dec. 29, 1910 addressed to W. E. DeLarm, Seattle, Washington by Edward J. Brazell.

It will be an easy matter to organize and incorpo-

rate for the purposes which you intend. Payment of the stock may be made in any property of value just as any ordinary private corporation.

Regarding the proposed arrangement of having the Trust Company be a depository, and accept deposits of money from its stockholders and issue certificates of deposit in return, there is much more difficulty.

(Discussion of Oregon Bank Laws omitted.)

We have been trying to think out some scheme to avoid a conflict with this act, and yet leave you to perform some of the functions which you desire. One plan that could be worked successfully would be to deposit money with the Trust Company as a loan to the Company, and have the latter issue its promissory note payable either on demand or a date in the future. The notes could circulate as a medium of exchange like currency fully as well as a certificate of deposit, and it seems to me ought to be as satisfactory to you as the certificates of deposit.

The issuance of notes each time a deposit is made might be a trifle cumbersome compared with other methods, but not to such an extent as to render its use valueless. The deposits you receive you could use just the same as a bank could; and the issuance of demand notes would provide a substitute for checks, for the money on them could be secured at any time on presentation. If you expect to make use of much of the money deposited with the Trust Company, of course, you would have to keep enough

cash on hand to pay the demand notes, but the time notes could be invested or used.

19.

Meeting of Incorporators of Oregon and Washington Trust Company, Jan. 19, 1911, present G. C. Hodges, F. H. Garretson, and E. J. Brazell.

E. J. Brazell was authorized to open stock subscription books.

20.

Formal subscription to capital stock of the Oregon and Washington Trust Co. signed as follows:

Names	Number of Shares	Amount
A. J. Biehl	166 shares...	\$16,600.00
W. E. DeLarm	166.....	\$16,600.00
G. C. Hodges	166.....	\$16,600.00
H. H. Humphrey	1.....	\$ 100.00
E. J. Brazell	1.....	\$ 100.00

21.

Minutes of the 1st meeting of stockholders Oregon and Washington Trust Co. Portland, Oregon, January 25, 1911 at 9:30 P. M. all of the corporators and stockholders, to-wit: (Naming them as set out in Ex. 20.)

Report of Incorporators.

Articles of Incorporation (Set out in full).

The enterprise, occupation and business pursuits for which this corporation is formed and in which it will engage are and shall be:

(1) To accept trusts and act as trustee, in any lawful business or proceeding whatsoever. To carry on a

general trust business and to do the several things necessary for such purpose.

The capital stock of this corporation shall be Fifty Thousand Dollars, divided into five hundred shares of the par value of One Hundred Dollars each.

Thereupon the stockholders proceeded to the election of five directors, which election resulted in the election by unanimous vote of each of the following stockholders, to-wit: W. E. DeLarm, A. J. Biehl, G. C. Hodges, H. H. Humphreys, and E. J. Brazell, as a director of said corporation for the term of one year and until their successors shall be elected and qualified.

22.

Minutes of 1st meeting of directors,
Portland, Oregon, January 25, 1911.

The board of directors of the said Oregon & Washington Trust Company, to-wit: W. E. DeLarm, G. C. Hodges, H. H. Humphrey and E. J. Brazell, each having theretofore taken an oath to faithfully and honestly discharge the duties of a director of said corporation, all met, pursuant to appointment for the first meeting of said board of Directors, A. J. Biehl, the remaining director of said corporation, being absent.

A. J. Biehl, was unanimously elected President. G. C. Hodges was unanimously elected first Vice-President, Treasurer and Trust Officer and Manager. H. H. Humphrey was unanimously elected 2nd vice-president, W. E. DeLarm was unanimously

elected 3rd vice-president. E. J. Brazell was unanimously elected Secretary.

An offer was then made by the Columbia River Orchard Company, a corporation having its principal place of business in Seattle, State of Washington, to have this company act as trustee for the bond issue of the said Columbia River Orchard Company., which said proposed bond issue is to be of the denomination of \$100.00 and to be progressive; the remuneration for said services to be \$100.00 for the first \$100.00 bond and 25c for each additional bond. Offer accepted.

An offer was then made by the Washington Orchard, Irrigation and Fruit Co., a corporation having its principal place of business in Seattle, Washington, to have this corporation act as trustee and to certify to the issue of 1000 Series "A" Bonds of the denomination of \$100.00 each, and 3000 Series "B" bonds of the denomination of \$100.00 each, of the said Washington Orchard, Irrigation and Fruit Co., the remuneration for services rendered in said capacity as trustee to be \$100.00 for the first bond and 25c for each additional bond. It was ordered that the offer be and the same is hereby accepted, and the trust officer is directed and empowered to communicate such acceptance to the Washington Orchard, Irrigation and Fruit Co., and to conclude the contract on behalf of this company.

It was ordered that the proposition of the Washington Orchard, Irrigation and Fruit Co. to pay to this

corporation for its services in acting as trustees and certifying to the bonds and also for the services of this corporation in acting as trustee for the proposed progressive bond issue of the Columbia River Orchard Co. of \$1700.00 by delivering to this company seventeen Series "A" 7 per cent Investment Bonds of the Columbia River Orchard Co., be and the same is hereby accepted, and the Trust officer is directed and empowered to communicate such acceptance to the Washington, Orchard, Irrigation and Fruit Co., and to accept the said 17 Series "A" 7 per cent Investment bonds of the Columbia River Orchard Company on behalf of this company.

It was ordered that the stock of this corporation be payable in cash only, and the officers be required to have the cash in hand before issuing the same.

It was ordered the Treasurer be instructed and ordered to sell and dispose of all bonds acquired and owned by this corporation, and also all bonds hereafter acquired and owned by this corporation at par and for cash only.

23.

Letter dated Portland, Oregon, May 15, 1911 to F. C. Koppen, Wahluke, Wash., by Oregon & Washington Trust Co., by E. J. Brazell, Secretary.

We beg to say with regard to the Columbia River Orchards Company's twenty year 7% bonds, for which we are the Trustee:

These bonds are a first obligation on all the holdings of the issuing company, and each \$100 bond is

secured by first mortgage for \$125 on real estate, the valuation of which is appraised at three times the value of the mortgage. That is to say, every mortgage for \$125 is secured upon property worth \$375 or more. These mortgages are held by us as trustees for the benefit of the bondholders. These bonds are further secured by the absolute and unqualified guarantee of the Washington Orchard Irrigation and Fruit Company, on each bond.

The Irrigation Company, to further secure their guarantee and to provide a sinking fund to pay these bonds have deposited with us, sales contracts on land already sold to the amount of \$125 for each \$100 guaranteed. These contracts run from three to eight years and the principal and interest will be both paid to us and the money will form a sinking fund to take care of these bonds. This will, in our opinion, automatically retire them in about eight years. The bonds are only issued upon the amount of collateral the company is able to put behind each bond. on the above basis.

We understand the company is now practically out of debt with the exception of the bond issue. We also understand, on good authority, that the company has one of the finest propositions in Washington and the men behind it are well able to carry it on successfully.

24.

Domay mortgage introduced as 42.

25.

Agreement between Columbia River Orchard Company called the Company, and Oregon and Washington Trust Company, called the trustee, dated Feb. 1, 1911.

First, The Company hereby binds itself to deposit in the hands of the trustee, good, valid and solvent securities consisting of mortgages, sales contracts, desert land mortgages, deeds to real estate, bonds, securities and other collateral of the face value of \$125.00 for each \$100.00 of bonds issued hereunder, and in like manner to deposit with said Trustee and to keep in the hands of said Trustee at all times. good, valid and solvent securities equal to one hundred and twenty-five per cent face value of the total of all bonds issued by it.

The company at the time of depositing any desert land mortgages or other collateral with the trustee, shall attach thereto an affidavit of its president, that said mortgages and other collateral are good, valid and solvent securities, and said affidavit shall be sufficient evidence of the truth of the statements therein contained.

(Paragraph providing sinking fund to pay bonds at maturity)

(Paragraph providing for interest payments) provided however, when in the discretion of the board of trustees of the company, it would inure to the benefit of all parties interested so to do the company may take ninety days additional time in which to make

a deposit, with the trustee of any interest due upon any bond issued hereunder.

Third, (Provides for division of bonds into series and for sale of securities to pay interest on bonds on petition of 50% of the holders of any series.

Fourth, The company reserves the right to mature or cancel the bonds secured as aforesaid, or any series of bonds, before the expiration of the time named in said bond, on payment of the principal of said bond, the accrued interest and sixty days' advance interest.

Fifth (Omitted)

Sixth, It is mutually understood and agreed that the company may, at any time, withdraw from the trustee any securities deposited with the trustee under this agreement, upon substituting therefor other good, valid and solvent securities equal in value and amount to the securities so withdrawn, or by depositing cash equal to the value and interest on these bonds. (Provision for withdrawing securities on retiring bonds.

Seventh, provides for such compensation for trustee as may be agreed upon.

Eighth, The trustee, will, upon request of the company, certify all bonds issued hereunder.

Ninth, (Provides for company to defend suits

Tenth, (Provides for substitution of trustee in case of failure to act or resignation. Said trustee shall not be liable for any act or thing done by it hereunder, except for gross negligence.

Eleventh, The amount of bonds which may be issued of any series under this trust agreement shall be limited only by the amount of collateral deposited with the trustee to the extent of One Hundred and Twenty-five per cent for every hundred dollars of bonds issued hereunder.

(Form of bond omitted)

For the debts and bonds hereby secured the Columbia River Orchard company is liable, and any deficiency after exhausting the mortgaged property and security, may be enforced against the Columbia River Orchard Company, but not against the officers, directors, trustees, incorporators or stockholders hereto, and it is agreed by every owner of every bond issued hereunder, that the existing and all future directors, trustees incorporators and stockholders shall not be individually or jointly or collectively liable to any extent or any purpose, with respect to said bonds or any of them.

Signatures and acknowledgement.

26.

Agreement between Columbia River Orchard Company and Oregon and Washington Trust Company, dated January 31, 1911. After reciting the trust agreement (Exhibit 5) It is hereby agreed by and between the parties hereto—to perform all of the conditions of said original trust agreement—said second party does hereby accept said trust and hereby agrees to perform all the conditions incumbent

upon said Washington Trust Co of Seattle, harmless from all the obligations thereof

32.

Water mortgage Jennie C. Koppen to Columbia River Orchards Company, dated April 1910, due May 15, 1911, for \$16,000 covering E $\frac{1}{2}$ of S.E. $\frac{1}{4}$ N.W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ and N. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of sec. 30, twp 14, N. R. 26 E. Desert Land Entry. (Same conditions as in Ex. 42)

33.

Desert Land Mortgage W. E. Stickel to Columbia River Orchards Co. dated Jan. 22, 1910, \$16,000, due May 1, 1912, covering N. E. $\frac{1}{4}$ of sec. 18 Twp. 14 N. R. 26 E. of W. M. (Some conditions as in Ex. 42.)

34.

Desert Land Mortgage James Perry to Columbia River Orchards Co. dated Jan. 22, 1910 \$8,000, due May 1, 1911, covering E $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of sec. 34 twp. 14 N. R. 25 E. of W. M. (Same conditions as in Ex. 42.)

35.

Real Estate mortgage given by Washington Irrigation and Fruit Co. to Oregon and Washington Trust Co. to secure payment of \$1,000,000 dated March 15, 1911. The following described tracts, or parcels of land lying and being in the County of Grant, State of Washington, and particularly described as follows, to-wit:

All its pumping plant, irrigation works, ditches, laterals franchises, machinery, power contracts,

water contracts, prospects Townsite of Wahluke and all the company's property of all kinds & description now located in Grant County, Washington, except Sec. 16 & 20 in Township 14 N. range 26 east, W. M. given as a special security to secure all bonds of Columbia River Orchard Co., up to \$1000,000.00 to be held in trust for the benefit of all bond owners, according to the terms of one trust agreement mentioned in said bond. Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging.

This conveyance is intended as a mortgage to secure the payment of all bond of Columbia River Orchard Co.

(Signatures and acknowledgement.)

(Formal parts omitted)

36.

Promissory note given Sept. 30, 1911, by Washington Orchard Irrigation and Fruit Company to Columbia River Orchard Co. and endorsed over to Oregon & Washington Trust Co. for \$5,750,000.00

Mortgage given by Washington Orchard, Irrigation and Fruit Co. to secure the same dated Sept. 30, 1911, covering as follows. Two hundred acres of land at Wahluke, Grant County, Washington, more particularly described as the S. W $\frac{1}{4}$ of N. W. $\frac{1}{4}$ and the E $\frac{1}{2}$ of the SW $\frac{1}{4}$ and the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 10, township 14 north of range 26 east, W. M., together with any and all other property, real, personal or mixed, of any kind, nature

or description which is now or may hereafter become the property of the party of the first part.

This conveyance is intended as a mortgage to secure the payment of obligations up to the sum of five million seven hundred and fifty thousand dollars and these presents shall be void if such obligations be paid.

Provided however that any or all of the above property may be released from the lien of this instrument by the payment, unto the party of the second part, of bonds of the Columbia River Orchard Company at their par or face value of an amount equal to the reasonable value of the property so to be released. The amount of bonds which must be turned over to the party of the second part before release is made of the above described real property shall be \$60,000.00 face value, and for each acre of water right so released, there shall be \$100.00 face value of the above described bonds deposited with the second party.

It is further understood that the party of the first part intends in the future to construct irrigation canals, pumping stations and other works necessary or useful in connection with the operation and maintenance of a water system irrigating additional land under said Wahluke irrigation project, and when so completed to sell same to the Columbia River Water Company and accept in payment for such values bonds of the Columbia River Orchard Company.

Signatures and acknowledgement.

(Not recorded)

For valuable consideration the Columbia River Orchard Company, party of the second part, in the above mortgage, hereby sells, assigns, transfers and sets over unto the Oregon and Washington Trust Company all its right, title and interests in and to the said mortgage.

Dated this thirtieth day of September, nineteen hundred eleven.

Columbia River Orchard Company by W. E. DeLarm, President.

R. H. MacWhorter, Secretary.

Affidavit to foregoing mortgage dated Sept. 13, 1911 same form as Ex. 12

37.

Extract from Journal Oregon & Washington Trust Co.

List of Water Mortgages.

W. B. Weber.....	16,000
Jennie C. Koppen.....	16,000
Elizabeth Montgomery.....	16,000
Amuel Cords.....	16,000
A. Ganier & wife.....	16,000
Jennie C. Koppen.....	16,000
Adolph Lindauer	16,000
Mrs. Mary Tucker.....	16,000
Geo. Holtzmer.....	16,000
Nelson Litchfield.....	16,000
John L. Rydberg.....	8,000

W. A. Joyce.....	16,000
Mary A. Domay	20,000
William E. Stickle.....	16,000
Virgil A. Robertson.....	16,000
F. C. Koppen.....	16,000
Laura Wattle.....	16,000
James Perry.....	8,000
James L. Markley.....	16,000
G. J. Heyver.....	16,000
Geo. Holtzner.....	16,000
F. J. Hipp.....	16,000
C. J. Sullivan.....	16,000
Tobias Skaar.....	16,000

\$372,000

Sales Contracts.

A list of 57 showing \$239,465.00 due thereon.

Real Estate Mortgages.

Washington

W. O. I. & F. Co	1,000,000.00		
W. O. I. & F. Co.	5,000,000.00		
Dec. 1.	Bonds issued	Hodges	1,000,000
			250,000
			500,000
	Biehl	250,000	1,000,000

38.

Letter George C. Hodges to DeLarm & Biehl Co., dated at Portland, Oregon, March 6, 1911.

Mr. DeLarm asks me to give him the name of the

securities that is the mortgages on the desert land, that I hold as trustee for the Columbia River Bond.

The following is the list of the names: James Henry, Mary Domay, Jennie Koppen, Elizabeth Montgomery, William E. Stei, W. E. Weber.

39.

Letter Jack dated Thursday October 26, 1911:

Just reced. wire as follows:

“Any liens outstanding against Series B bonds 2202 to 2221 Columbia River Orchard Co., Is this series first closed and only lien against securities under trust agreement.”

K. E. Kaufman

215 Montague St., Brooklyn, N. Y.

What does series B mean? I answered as follows:

Bonds referred to first lien against securities under trust agreement.”

Looks like some one is getting busy. Brazell turned over all securities this A. M. Would not wait any longer. Would appreciate a name of Seattle director for Trust Company, as I wish to elect new directors (3) It is important for several reasons.

Have an interview with Brown's kickers here in the slate. Will endeavor to educate them if possible.

40.

Land and water contract. Form of. The essential elements of this form are: 1. The company agrees to sell to the purchaser the following real property

situate in the County of Grant and State of Washington, to-wit:

(Blank for description) 2. Provides for installation of irrigation plant. 3. Provides for delivery of water. 4. Provides for payment for water. 5. Agreement to operate plant. 6. Additional provision for future payments and that the same shall run with the land. 7. Provides for use of water. 8. Provides for measuring water and shutting it off for repairs. 9. Provides for enlarging and building new ditches on the land. 10. Additional provision for covenant running with the land. 11. Provides against waste of water. 12. Provides for lien on land for use of water. 13. Provides for the payment for the land. 14. Provides for paying taxes on land. 15. Provides for improvements remaining on land until land is paid for. 16. Provides remedies in case of default in payments. 17. Provides for foreclosure of lien. 18. Provides for serving notice of foreclosure. 19. Provides whole contract to be assigned or none. 20. *Shall* bind heirs, successors and assigns.

Signatures and acknowledgement.

41.

Not introduced.

42.

Mary A. Domay mortgage to The Columbia River Orchards Co., dated June 1, 1910, covering the SW $\frac{1}{4}$ of NE $\frac{1}{4}$ sec. 10 twp. 14 N R. 26 E. W. M. and SE $\frac{1}{4}$ of NW $\frac{1}{4}$, E $\frac{1}{2}$ of SW $\frac{1}{4}$ said Sec. 10.

Conditioned (Reciting the building of the irrigating project) which work is to be completed on or before the 1st day of April, 1912.

(Long recitals in regard to furnishing water.)

In the event that the said party of the second part (the company) shall not complete the covenants contained herein, then, at the option of said first part (Mary A. Domay) this mortgage to be void.

Signature of parties.

Not acknowledged.

Accompanied by note for \$4000.00 dated June 1, 1910, due April 1, 1912, and note for \$16000 dated June 1, 1911, unsigned and several assignments of same the last to the Oregon & Washington Trust Co. and affidavit of W. E. DeLarm that it is "a good, valid and solvent securities."

43.

Assignment of Emil F. Cords mortgage dated June 10, 1910 to Columbia River Orchard Co. May 1, 1910.

44.

Assignment of Cords mortgage to Washington Trust Co., Aug. 19, 1910.

45.

Assignment of Alfred Gagner mortgage Aug. 10, 1910 to Columbia River Orchard Co.

46.

Assignment of Gagner mortgage to Washington Trust Co., Aug. 19, 1910.

47.

Affidavit accompanying Jennie C. Koppen duplicate mortgage same form as Ex. 12,

48.

Assignment of L. Wattle mortgage to Columbia River Orchard Co. May 7, 1910.

49.

Assignment Laura Wattle mortgage to Washington Trust Co. May 7, 1910.

50.

Meeting of the stockholders of the Washington Orchard Irrigation and Fruit Company, held January 28, 1911.

All the voting stock of the corporation was present in the person of the holders thereof. The following resolution was unanimously adopted:

Whereas the Columbia River Orchard Co., a corporation did as a method of financing the project issue and circulate bonds under a scheme or plan whereby the issue thereof was progressive and based upon the deposit with a trust company of securities worth one hundred and twenty-five dollars for each one hundred dollars in bonds issued.

And whereas a number of such bonds have been issued and the payment thereof assumed by this corporation; and whereas it is to the best interests of this corporation to continue the policy of the Columbia River Orchard Company and to continue the issue of said bonds (all of the stock of said corporation being owned by this corporation) instead of is-

suing the bonds of this corporation, thereby saving the expenses in preparing such bonds issue and establishing a market therefor.

Now Therefore be it resolved that the directors of this corporation be and they are hereby authorized to purchase from the Columbia River Orchard Co. such of its bonds as may be required by the Corporation paying for the same in sales contracts, water mortgages or other good and valuable securities of the company, and

Be it further resolved that to assist in the marketing of said bonds and to expedite the sale thereof, that this corporation guarantee the payment of the principal and interest thereof and the president and secretary of this corporation are hereby authorized and directed to execute with the Columbia River Orchard Co. any and all agreements necessary to carry out this resolution and execute, acknowledge and deliver all necessary deeds, sales contracts, bonds, mortgages or any instruments where the name and seal of the corporation is to be affixed. And

Be it further resolved that the officers of this corporation be directed and authorized to enter into an agreement with some reputable trust company to act as trustee for the bond issue hereinbefore referred to and to make and deliver to said trustee company all necessary deeds of trust to secure the same and to deposit with said trust company deeds mortgages, sales contracts or other good and suf-

ficient collateral to secure said bonds and provide a sinking fund for their retirement.

51.

Meeting of the Board of Directors of the Washington Orchard Irrigation and Fruit Company held January 28, 1911. There were present Mr. George A. Custer, Mr. R. H. MacWhorter, Mr. W. E. DeLarm, Mr. A. J. Biehl, Mr. J. C. Muirhead, Mr. John E. Godfrey. W. E. DeLarm elected president and A. J. Biehl, Secretary-treasurer.

The president announced that arrangement had been made with the Oregon & Washington Trust Co. of Portland, Oregon, to act as trustee for the bond issue authorized by the board of stockholders and upon motion such selection was approved.

The president and secretary were authorized to execute and deliver a trust agreement with said company and were further authorized and directed upon the receipt of the company by the company of bonds of the Columbia River Orchard Co. to execute a guarantee of the payment of the principal and interest thereof.

52.

Petition in bankruptcy filed in the District Court of the United States for the Western District of Washington, Northern Division. In the matter of Columbia River Orchard Co., a corporation, alleged bankrupt, Filed March 13, 1912, by A. C. Gum, creditor, indebtedness \$341.90, R. H. MacWhorter, creditor, indebtedness \$340.00 and Harry Brown, cred-

itor, indebtedness \$200.00. Petition is in the usual *for* for involuntary bankruptcy. Subpoena shows service March 15, 1912, and admission of insolvency filed Mar. 16, 1912, by the company signed as such by R. H. MacWhorter Secretary and treasurer. Order declaring company bankrupt signed by C. H. Hanford, Judge, March 16, 1912.

53.

Petition for involuntary bankruptcy filed in the District Court of the United States for the Western District of Washington, Northern Division In the Matter of Washington Orchard Irrigation and Fruit Co. a corporation, by Standard Oil Co., creditor, indebtedness \$121.47; A. C. Gum, creditor, indebtedness \$840.50; Scott I. Wallace, creditor, indebtedness \$1240. Petition in usual form filed Feb. 5, 1912 Admission of insolvency filed Feb. 5, 1912, signed Washington Orchard Irrigation & Trust Co. by R. H. MacWhorter secretary & Treasurer. Order adjudicating the company bankrupt signed February 5, 1912.

54.

Certified copy of the proceedings in the Superior Court of the State of Washington for Grant County, Puget Sound Bridge & Dredging Company, a corporation, plaintiff, vs. Columbia River Orchards Company, a corporation, Kilbourne & Clark Company, a corporation, and U. Edwards, Defendants. Complaint recites contract between Columbia River Orchards Co. and Kilbourne & Clark Co. and the sub-

contract between Kilbourne & Clark and the plaintiff, and the building of the pumping plant by plaintiff, that the value of the labor performed unpaid is \$22,482.67; that on the 23rd day of Sept. 1910 plaintiff duly gave notice of claim for lien and recorded same on Sept. 26, 1910 claiming a lien on the pumping plant, machinery, ditches, canals, etc. Prayer for judgment \$22,482.67 with interest at 6 per cent from July 5, 1910 and for lien on the property and decree foreclosing the same and for \$1500.00 attorney fees.

Certified copy of summons and return showing service. Certified copy of document filed in case reading: "It is agreed and admitted on behalf of the defendant Kilbourne & Clark Company a corporation that the amount justly due on the claim of plaintiff in this action to the 26th day of January, 1912, is \$22,059.40. Dated Jan. 25, 1912 Kilbourne & Clark Company by C. A. Kilbourne President. Filed Jan. 26, 1912, and also a certified copy of a stipulation to the same effect by the Columbia River Orchard Company signed by W. E. DeLarm, President.

Judgment entered Jan. 26, 1912, for the sum of \$22,059.40 and decree foreclosing lien and order of sale of the property.

55.

Certified copy of contract between J. M. Friel & wife A. L. Maltbie & wife, S. A. Pearl and wife and others and The Columbia River Orchard Company,

dated May 23, 1910, for the sale by first parties to second parties of section 20 township 14 N. R. 26 E. W. M. in Grant County, Washington for the sum of \$64,000 to be all paid within 20 months after date, Recorded in Volume 2, page 481, Land Contract Records of Grant County, Washington.

56.

Certified copy of Land contract between E. E. Davis & wife and A. L. Maltbie and Silas Pearl, dated April 2, 1910, agreeing to sell 1-3 interest in Sec. 20, twp. 14, N. 26 E. W. M. for the sum of \$7455.00 to Maltbie and Pearl, all to be paid by April 1, 1912.

57.

Certified copies Claim in regular form of Oregon & Washington Trust Company filed in the Matter of Washington Orchard Irrigation and Fruit Co., a bankrupt, in U. S. Dist. Court at Seattle. Sets out mortgage Ex. 35, and filed April 29, 1912, with John P. Hoyt, referee in bankruptcy; filed with the clerk Jan. 6, 1913; Objections to claim filed by Louis P. Sichler by his attorneys McClure & McClure to which is attached as an Exhibit the trust agreement (Ex. 25 herein) Filed May 7, 1912, with referee, and with the clerk Jan. 6, 1912, as follows:

It is ordered that said mortgage be and the same is hereby adjudged to be invalid and not a lien upon the property therein described or any portion thereof or upon the property of the bankrupt or any portion thereof.

58.

Portland, Oregon, March 27, 1911.

Washington Orchard Irrigation & Fruit Co., 227 Henry Building, City. Gentlemen: Enclosed please find our receipt in full payment for the pumping outfit for which you contracted with us to build on the Columbia River at Indian Corral, near Wahluke. We desire at this time to thank you most sincerely for your very courteous and generous treatment of our company. We are also enclosing the contract on our part to install the second unit at such time as you may require same. We feel that you will have the finest pumping plant on the Columbia River. You have not stinted us in any way and have allowed us to put in the best of material and workmanship and as good apparatus as can be purchased. This present plant will give you a capacity of 10,000 gallons per minute at low water, and about 25. per cent increase over this amount during the high water period when you will do most of your pumping. The second unit which we stand ready to install at any time upon three months notice will be an exact duplicate of the present unit. Again thanking you, we are, Very sincerely yours, Kilbourne & Clark Company, E. C. Kilbourne, Manager.

59.

Letter dated Seattle, Wash., Sept. 9, 1911, to Mr. R. S. Chapman by W. E. DeLarm. Story of Wahluke, giving a long history of the project among which are the following extracts:

Among the passengers who went on a Sunday excursion, the fall of 1907, on the old steamer Todd, from Peace to Priest Rapids, were George W. Armstrong, from Spokane, a promoter, ex-politician and all round good fellow, and H. H. Humphrey, a practicing attorney of Kennewick. Neither had money, eastern connections or influence but what they lacked in these they made up in nerve and inexperience. On the 23rd of December of the same year, held a meeting in the office of Mr. Humphrey, in Kennewick, and with the assistance of three accommodating friends, organized what they called the Columbia River Orchards Company. This company was regularly incorporated under the laws of the State of Washington on January 28, 1908, with an authorized capital stock of one hundred thousand dollars. Their plan was to raise, by selling stock of the company sufficient funds to water several sections of this land.

During the winter of 1908 another trip was made up the river, to secure, if possible, land under the proposed canal in exchange for stock of the company. Mr. F. C. Koppen, the Postmaster at Wahluke and one of the leading citizens of that section, was induced to deed the company eighty acres of land in consideration of eight thousand dollars par value of the company's stock and being made president of the corporation.

With this holding of real property and two desert land mortgages on 160 acres of land each, the com-

pany began actual construction work on the project. A townsite was laid out, two lots sold to local boosters for three hundred dollars each, and an eight room hotel built. A well was dug, striking water at sixty-two feet, and a large storage tank holding thirty thousand gallons erected; with the addition of a seven horsepower gasoline engine and a small pump the irrigation system was begun. It soon was found that the capital stock of the company was far too small to accomplish much, especially when so little actual cash was realized from the sales. It was decided to form a new company with a larger capital stock. On the second day of January, 1909 this new company was incorporated for five hundred thousand dollars under the name of The Columbia River Orchard Company. A fresh supply of stock certificates now being available, stock selling began in earnest. Ranchers, clerks, railroad men, everyone who could be made to do so, contributed toward keeping up the traveling expenses and hotel bills of the salesmen. About twelve thousand dollars of actual cash and a large collection of non-negotiable paper was realized. A contract was let in the following fall, to Uriah Edwards for the construction of ten miles of main canal at an agreed price of twenty cents per cubic yard, one third payable in cash and two thirds in stock of the company. Owing to the absolute inexperience of Edwards, what little work he accomplished was useless outside of the clearings of the right of way for the canal.

In the early part of January, 1910 the project was taken under option by the firm of DeLarm and Biehl, of Seattle. Early in March steps were at once taken to begin construction work in earnest, and under competent plans and direction. A contract was entered into with Kilbourne and Clarke of Seattle, for the construction of a thoroughly modern reinforced concrete pump house of the latest and most efficient design, and the installation of the best obtainable pumping machinery electrically driven and directly connected to the meters. As the demands for funds were insistent during this construction period, and the securing of rights of way delayed, it became necessary to provide some intermediate means of raising necessary capital until the proposed bond issue could be realized upon. To tide over this interim a bond issue of \$62,000.00 was authorized to be taken out through the first company (Columbia River Orchards Company) assigning desert land mortgages to this company amounting to \$125.00 for each \$100.00 of bonds issued. This company was made a holding company and had no liabilities other than those bonds and the interest on the same. All of the first company's stock belonged to the second company, and was by that company returned to the treasury of the first company with the exception of five shares. This eliminated all stock liability except the five shares necessary for the trustee. Of this bond issue \$59,000.00 was issued and certified to by the Washington Trust &

Savings Bank of Seattle, who were appointed trustees. These bonds were realized upon by being exchanged for clear city property, a mortgage being placed on the property and the proceeds used to defray the construction expenses. The equities and more bonds were then exchanged for more clear property and the process repeated. In this *was* about fifty per cent of the face value of the bonds was secured in either cash or commodities which applied directly on the construction work. For instance—in many cases property could be exchanged directly for lumber, cement, etc., and the other fifty per cent of the face value of the bonds retained by the company in the form of real estate equities. It also was found that a considerable number of the holders of the bonds would exchange them for acreage under the project, and in this way another desired result was accomplished—the securing of actual settlers on the land. Jan. 1911 a contract was let to J. H. Fox of Spokane, to do \$20,000.00 worth of ditch construction for cost, plus 10%. A competent engineering crew was secured and actual work again begun. In about two months this money was used up and an additional contract for the same amount made. Later it was found necessary to increase it by another similar sum, making the actual cost of the ditch over sixty thousand dollars, exclusive of the engineering charges. When the latter was finally completed the pumping plant represented an outlay of more than \$115,000.00. An auxiliary

power plant was installed. The contract for this was let to Gray and Barish of Seattle for about \$7,500.00. This brought the complete cost of pumping station, canals, rights of way and engineering up to over \$300,000.00 with a replacement valuation of approximately \$250,000.00. Early in January 1911, it was thought best to issue additional bonds to secure funds to defray these added expenses and acquire acreage under the project. It was also decided to organize a new company to buy the project from the Columbia River Orchards Company in order that everything might be entirely right and clean for the extra issue of bonds—these bonds to be guaranteed by the new company. Accordingly the Washington Orchard Irrigation and Fruit Co. was incorporated under South Dakota Laws for \$1,500,000.00 preferred and common stock. Of this amount \$400,000.00 was preferred and \$1,100,000.00 common. Three hundred thousand of the preferred was given to the Columbia River Orchards Company for their interest in the irrigation project, and the common was given to DeLarm and Biehl for their holdings and the additional monies they had advanced. Upwards of five hundred thousand dollars worth of bonds were issued under date of February 1, 1911, bearing seven per cent interest, and exchanged for property which was used as previously explained. The company issued these bonds through the first company organized viz., The Columbia River Orchards Company. As the company exchanged these

bonds both ways, either giving them for property or taking them in exchange for property, it was thought best to issue the bonds under three dates, February 1st, June 1st and October 1st. When February bonds were taken in exchange for Company property June bonds were put out next time and February bonds of an equal amount cancelled. This waved paying interest on that amount of bonds for four months. In a like manner June bonds were to be taken up and October bonds put out instead. If sufficient exchanges both ways could be effected, practically but little interest need be paid out.

Again—the Company accepted bonds or property as first payment on acreage under the project, and in this way retired some bonds, retiring others by exchanging the properties received for acreage for more bonds, thus reducing the issue by that much. This plan worked out admirably until several firms of brokers determined, for their own profit and without reference to the welfare of the company or even the truth of the statements they made regarding it, to break the market. As the trading in these bonds was very active, large amounts of them got into the hands of brokers who received them in payment of commissions. These they could afford to do and would sell for less than par, and using this as a leverage, and by constant pounding the market was broken until the bonds could be purchased around ten cents on the dollar for cash, although they still were taken in trade around fifty The company

could not afford to let their bonds go at anywhere near this price, and the only way of still getting results as first outlined was by making exchanges at distant points for bonds at par and exchanging them for bonds at home at the market price. In August, 1911, a separate water company was formed so as to entirely separate the canals, pumping plant and water system from the land and bond department of the business. To this company was sold the irrigation system—canals, pump house and accessories for \$250,000.00. The present standing of this company, the Columbia River Water Company is summed up in the following statement:

Financial Statement.

Assets:

Pump house, canals, laterals and distributing system as now already installed including steam power plant.....	\$250,000.00
Open account "Bills Receivable" of Washington Orchard Irrigation & Fruit Company, payable in 90 days.....	25,000.00
Two additional pumps and attachments which are to be installed within one year by Kilbourne & Clark Company at no additional cost to the Company.....	10,000.00
	<hr/>
	\$285,000.00

Liabilities:

Capital stock.....	\$250,000.00	
Balance due on construc-		
tion.....	25,000.00	
Surplus.	10,000.00	
	<hr/>	<hr/>
	\$285,000.00	\$285,000.00

The sale of the pumping plant, canal and distributing system of the Washington Orchard Irrigation and Fruit Company to the Columbia River Water Company, was so conducted that no liabilities of any nature of the former company were transferred to the present corporation, with the exception of the \$25,000.00 mentioned in the financial statement. This you also will note is offset by the bills receivable account of \$25,000.00 and when this is met, will leave the property of the company entirely free from debt.

Organization.

The company is a Washington corporation with a paid up capitalization of two hundred fifty thousand dollars. There is no indebtedness against the corporation other than is shown, and it is the purpose of the company to secure a bond issue along the lines hereinafter designated.

Ownership.

The Columbia River Water Company is a close corporation, the stock all being held by five persons. Coupled with the ownership of this company, is *als* the control of the Washington Orchard Irrigation

and Fruit Company, which owns and controls the land department and the water mortgages on lands under this project, thus insuring perfect cooperation.

60.

Affidavit of DeLarm to Mrs. Koppen mortgage same form as Ex. 12.

61.

Letter Hodges to DeLarm & Biehl dated Portland, Oregon, June 19, 1911. Regarding the Minchot property in my conversation with you over the phone before the *Michot* deal was made, you said you had \$700 mortgage and the \$100 mortgage, and I agreed to take over this property, including this mortgage at this price. You know the state of my finances at the present. It will be impossible for me to take care of this at present, so guess you will have to take care of it for me now and let me have the property when the mortgage is paid.

62.

Statement of Columbia River Orchard Company.

The Columbia River Orchard Company is a Washington corporation with a capital stock of \$100,000.00 which has been fully paid in mortgages on farms, and the stock is now owned and held by the Washington Orchard Irrigation and Fruit Company. The Company is essentially a holding company and incurs no liabilities other than the issuance of bonds. There has been authorized a bond issue which is pro-

gressive and is limited in amount to securities amounting to 125 per cent for every \$100 of bonds issued. At present there has been \$104,000.00 of bonds issued.

Assets:

Mortgages. \$188,000.00

Liabilities:

Bonds issued. \$104,000.00

Accrued interest 1,180.00

Taxes. 17.50 105,197.50

Surplus. \$ 72,802.50

The mortgages mentioned above are on farm lands at \$1000.00 per acre, which land is selling for \$350.00 per acre and there are no other mortgages on the above property. In addition to the above security the principal and interest on the bonds of this company is guaranteed by the Washington Orchard Irrigation and Fruit Company.

Seattle, Washington, February 15th, 1911.

Attest A. J. Biehl, Secretary.

63.

Statement to the Fidelity and Deposit Company of Maryland, Baltimore, Maryland, by Washington Orchard Irrigation and Fruit Co.

Incorporated 1911.

Cash on hand \$ 3,250

Cash in stocks, bonds &c Mkt value. 150,000

Real estate and where located (Give location and description of each piece)

1. About 1400 acres under water in Grant	
Co., Wash., \$3.50	490,000
1-3 sold at above price	
Farm and city property about	50000
Irrigation project	500000
Plant consisting of	
Pumping plant all paid	160000
Irrigation works	50000
Townsite Wahluke	40000
Stock of Supplies	
Notes Receivable from sale land	150000
Accounts "	8000
Other assets and nature thereof	
Total assets	1,601,250
Capital stock	1,500,000
Bonds	
Borrowed or due on Real estate	57,500 Long time
Being balance due on purchase	
price on 11.20 acres & town-	..
site	
Incumbrance on plant	none
Notes payable	2,000
Accounts payable construct about	6,000
Other liabilities and nature thereof	
Sundry small accounts	500
<hr/>	
Total Liabilities	1,566,000

Amount of liability as endorser or surety for others, \$400,000 bond issue guaranteed and protected

with \$125 of notes and water contracts for every \$100 of bonds.

Amount of Employer's liability insurance carried

.....

List of contracts completed. Installing irrigation works to water 17,000 acres, which will be completed in about 30 days and all paid but about \$20,000.

The above statement is made for the purpose of inducing the Fidelity and Deposit Company of Maryland to execute a bond on behalf of Pacific Light & Power Co., in the penalty of \$15,000 application for which bond was dated Mar. 11, 1910, and I hereby declare that the above is a true statement of its financial condition without any mental reservation whatever, and also that it has never defaulted on a contract, and that no one has ever been obliged to pay a loss on account of having become its surety.

W. E. DeLARM, A. J. BIEHL, President Secretary.

Sworn before me this 11th day of March, A. D. 1911.

JOSEPH R. ANDERSON, Notary Public.

References

Kilbourne & Clark Co. Engineers, Seattle.

Jos. R. Anderson, Attorney, Seattle.

64.

Brief summary of irrigation project of the Columbia River Orchards Co.

Lying under project17,740 acres
 of which 8540 is R. R. land..... 8,540

Leaving 8,200 acres
 Under entry.

On basis of \$100.00 per acre for water, this will when sold, amount to \$920,000.00. Of the above \$184,000.00 have been signed and delivered. 160 acres is State land yet unsold.

1120 acres has been purchased by the Company on contract. Of the above land taken by entry, 2880 acres is deeded or final proof now being made. This is exclusive of the 1120 acres purchased by the Company, which also is deeded or school land purchased from the state. Making a total of 4,000 acres which is held in fee simple.

11 sales contracts closed for 150 acres of land, or an average of \$300.00 per acre. Balance due on contracts with notes attached \$14,947.00.

Recapitulation.

Water contracts signed	184,000.00
1120 acres of land at \$200.00 an acre	204,000.00
Townsite	50,000.00
Pumping plant and ditch	70,000.00
Launch	2,500.00
Tools and equipment	4,000.00
Engineering work	5,000.00
	<hr/>
	\$539,500.00

Liabilities

Balance due on land contracts	78,000.00
Balance due on pumping plant and ditch .	40,000.00
Notes payable	3,118.00
Open accounts	1,300.00
	<hr/>
	122,418.00
8080 unsigned water rights	808,000.00
	<hr/>
	\$1,225,082.00
less cost to complete project	100,000.00
	<hr/>
	\$1,125,082.00

This does not include 8540 acres of R. R. land for which practically all the expense for furnishing water has been met in the above.

THE COLUMBIA RIVER ORCHARDS CO.

W. E. DeLARM, Pres.

A. J. BIEHL, V-Pres. & Secy.

Seal

65.

Statement of financial condition of Washington Orchard Irrigation and fruit Company. The company is putting water on about 17,000 acres of land lying along the Columbia River in Grant County, Wash., which mostly comes under a sixty foot lift. This pumping plant is considered by engineers the finest in the country and is practically completed, and is fully paid for, including additional units which will be needed next year.

The ditch work is under contract and there will be nine miles of same completed in fifteen days, and is paid for with the exception of about twelve thousand dollars. This practically makes the entire system fully paid. Owing to the changing daily of the company's condition a financial statement can only be given which is approximately exact, but covers all the essential conditions.

Assets:

Real estate in Seattle and other parts of the state not under the company's pro- ject	\$ 200,000.00
Real estate under the company's project	200,000.00
Water rights in for 10,000 acres at \$100	1,000,000.00
Supplies on hand	3,000.00
Stock in other corporations	303,000.00
Two naptha launches,	5,000.00
Treasury stock	100,000.00

Total assets about\$2,061,000.00

Liabilities

Capital stock	\$1,500,000.00
Bills payable	8,750.00
Forward Assets,	\$2,061,000.00

Liabilities

Forward	\$1,508,750.00
Due contractor	12,000.00
Balance unpaid on real estate	28,000.00
Liabilities about	1,548,750.00

Approximate surplus of assets over lia-
bilities \$512,250.00

There are a few current assets and liabilities which are not included herewith as one practically balance the other.

WASHINGTON ORCHARD IRRIGATION AND FRUIT CO.

A. J. BIEHL, Secy.

66.

Letter dated April 8th, 1911 to J. H. Fox, Spokane, Wash., by Washington Orchard Irrigation and Fruit Co. by W. E. DeLarm, Pres. submitting proposition for \$20,000 worth of work on ditches in addition to the contract of Jan. 3, 1911 for \$20,000 worth of work on canals and ditches.

We agree to pay for such work as is done over and above the first \$20,000 called for in the contract in our letter of January 3rd, as follows: \$3,000 May 1st; \$5,000 May 15th; \$5,000 on the 15th of each month thereafter until paid.

67.

Meeting of stockholders of the Washington Orchard Irrigation and Fruit Company Held August 9, 1911.

The following resolution was presented, read and upon motion unanimously adopted: Resolved that the Board of Directors of this corporation or its executive committee be, and the same are hereby authorized to offer for sale the irrigation system of this company, consisting of said pumping plant and ditch and to sell the same for the sum of not less than \$250,000 payable in cash or in bonds guaranteed by

this corporation provided that the purchaser thereof enter into a contract with this company to deliver water without further cost to three thousand acres of the company's land upon the payment of the same maintenance fee charged by the company on the lands heretofore sold by it and the president and secretary are further authorized as part of said transaction to turn over to such purchaser all of the water mortgages owned by the corporation covering land situated on the level of lands irrigable by the present ditch within such time as the company can safely do so after protecting itself on the reservation of water rights for three thousand acres.

W. E. DeLARM, President.

A. J. BIEHL, Secretary.

68.

Contract between W. E. DeLarm and R. S. Chapman whereby Chapman *undertood* to negotiate the bonds of the Columbia River Water Co. to the amount of \$2,500,000 and providing compensation therefor \$5000 in cash and \$20,000 par value of stock of company and also provides for purchase of lands of Northern Pacific Co. by Chapman at a commission of \$1.00 per acre, dated at Seattle, Washington, September 9, 1911.

69.

Letter dated Tacoma, Wash., 2-25-1911 to C. C. Hodges, Portland, Ore. By R. H. MacWhorter. We have a woman here who owns a bungalow in Portland and who wants to trade it for Tacoma property.

Have a deal on with a Miss Hamilton here for her place which she holds at \$7,000.00 and as it is for Columbia bonds, she will either write or go to Portland to see the Oregon & Washington Trust Co. about them. I have tried to get her to write as I do not know whether you have the new name on the door and a trust company on the ninth floor might not make as good an impression as a letter. However, I know that should she take a trip down there you can persuade her that the bonds are worth more than par. I have not told her that you were identified with the trust company and do not know whether or not she is acquainted with you. Things really begin to look like we might do some business here soon. With kind regards to Mr. Humphrey.

70.

Letter dated Portland, Oregon, Mar. 4, 1911 to Standard Investment Company, Seattle Wash. by Oregon & Washington Trust Co. by H. H. Humphrey V. P. Letter identical with Ex. 23.

71.

Letter dated Portland, Oregon, April 28, 1911 to Mrs. Bell Nickell, Jacksonville, Oregon, by Oregon & Washington Trust Co. by H. H. Humphrey. Identical statements as in No. 23. We understand the company is now practically out of debt with the exception of the bond issue. The bonds are issued upon the amount of the collateral the company is able to put behind each bond. We also understand, on good authority, that the company has one of the finest

propositions in Washington, and that the men behind it are well able to carry it on successfully.

72.

Letter dated Portland, Oregon to DeLarm & Biehl by Geo. C. Hodges. In looking over the bonds and securities sent me the other day I note there are 16 bonds for \$100 each. I suppose this was meant for the amount due to the Oregon and Washington Trust Co. We also received the mortgages for \$75,000 that is to secure the bonds. We have two or three new things on today that look very good and we are trying our very best to force something that will get us some more funds for we are certainly in need of them. I have been trying all day to get hold of that Missouri man but have not succeeded yet. Mr. Humphrey has some new things on today in the course of time. The money did not come this morning for the rent and other expenses and we must have that quick.

73.

Letter dated Portland, Oregon to DeLarm & Biehl by Geo. C. Hodges. On looking over the bonds more carefully and separating each one I find there are 17 bonds so you do not have to come through with the other bond.

74.

Letter dated Portland, Oregon, February 5, 1913 to DeLarm & Biehl by Geo. C. Hodges. It is a very serious matter with us, with Hartman & Thompson calling on the phone about every few minutes for that

check you promised absolutely to wire, and the building people threatening to put us out into the street, because we did not pay our rent, and Hartman & Thompson people are downstairs, in the same building and are sure to get together with the rent people, as soon as they do then, we all go through. We must have the trust agreement you promised that you would send us last week, now this is absolutely important and you can send it, and you must do it. You told me that the Washington Trust Company would send down those securities, and their trust agreement, but I have not seen or heard anything from you since the phone message last Friday evening. We are certainly in dire straights and need help. Please send us some succor. If we do not have it at once, we will all be turned out in the street.

75.

Letter dated Portland, Ore., Aug. 23, 1911 to R. H. MacWhorter, Seattle, Wash by Oregon & Washington Trust Co by A. J. Biehl, Pres. As trust officer of this company you will please certify Columbia River Orchard Company Series A, June issue bonds to the amount of Two Hundred Eight thousand dollars, securities to the amount of 125 per cent of that amount having been delivered to us.

76.

April 25, 1911.

This agreement entered into by and between John Stephens of Seattle, Washington, and A. J. Biehl, of Seattle, Wash. Said John Stephens agrees to

loan \$800.00 to the said A. H. Biehl at the rate of seven per cent interest, said loan being for a period of sixty days from this date and due June the 25th, 1911.

The Columbia River Orchards Company to turn over to said John Stephens the sum of ten thousand dollars Columbia River Orchards Co. bonds as security for said loan of Eight Hundred Dollars.

JOHN STEPHENS.

A. J. BIEHL.

April 24, 1911. Received on account \$100.00 and turned over \$2000 of C. R. O. Bonds.

A. J. BIEHL.

77.

Letter dated Seattle, U. S. A. May 3, 1911 to The Leanord Agency, Walla Walla, Wash. by DeLarm & Biehl. The bond issue which was gotten out by the Columbia River Orchards Company, is progressive and is secured by \$125, in mortgages on real estate behind each \$100 bond. The present amount of bonds issued is about \$400,000 and have brought par for all bonds which have been sold by the company. We consider them very good and they are fairly active in the Seattle market.

78.

Letter dated Tacoma, Oct. 4th, 1910 to Columbia River Orchards Co. by Geo. C. Hodges Sec. Puget Sound Realty Co., Seattle, Washington.

Mrs. Watkins came in very much exercised yesterday and wanted to know about the standing of your company, etc., and I tried to pacify her and finally

at last she showed me a letter that she had received from a man by the name of Nelson connected with some business chance concern in Seattle called the Northwestern or something like that, statement that they had a client, a Mr. So and So, and mentioning the name, who was in possession of Mrs. Watkins' contract and notes for \$2600 given to the Columbia River Orchards Company and that their client had loaned money to the Columbia River Orchards Company and had taken this in as security but they doubted if ever the Columbia River Orchards Co. could pay it so they would naturally look to Mrs. Watkins and they had asked Mrs. Watkins address but Mr. DeLarm said he didn't know the address and saying that they hoped that she would not mention this to anybody and so on and so forth. The letter was addressed to Mrs. Watkins in Tacoma and it came to another Mrs. Watkins before it came to her and was opened and read, so you see how much damage this has done. Now I realize the necessity for using these things as security in banks and in certain places because securities are negotiable but I can't see the policy of peddleing these things out to individuals and having individuals put it in the hands of business like this and then to write a letter of this kind to the purchaser. I think this whole thing is very, very bad business.

I was able to throw myself in the breach and show them the contracts for Mr. Taylor and myself taking ten acres just above them and assuring them that I

was going to have some more and finally got her and her sister to look at it in a little different way and to express a desire to go over and see and investigate for themselves so now she wants to go and I want her to go with either you or I and I can't get away so you must take her just as soon as you can possibly arrange it. I told her that you possibly would go Thursday. Now I don't think you had better make this later than Friday because it is important and needs immediate attention. Now answer this letter at once and make it so that I can show her the letter, but do it at once.

79.

Letter dated Tacoma, Oct. 6, 1910 to Columbia River Orchards Co. Seattle, Wash., by George C. Hodges. Things never looked brighter for immediate results than they do at this time and I am afraid to tell you of any particular case as there about a dozen on and a half dozen ready to close. We are especially anxious to help get that money ready so that you may take over that snap in the land, and believe me, when I say, we are letting nothing slip at this end of the line.

80.

Letter dated Tacoma, Oct. 8, 1910 to Columbia River Orchards Co. by Puget Sound Realty Co. by Geo. C. Hodges, Sec.-Treas.

The Puget Sound Realty Company has decided to take over the \$500 equity in the Carmichael house as there is no immediate chance of a settlement, and per-

haps you had rather have this thing closed up in this way as it is bound to come to a condemnation suit, so the commissioner of Public Works tells us to-day. So you can charge the Puget Sound Realty Company \$500 in commission against the Maxwell and Carmichael deals which is the amount of your equity and we will have the Notary fill in the deeds on this to-day.

81.

Letter dated Tacoma, Wash., Dec. 6, 1910 to Columbia River Orchards Co., by Geo. C. Hodges. We have received today six hundred dollars on the Williams house, and have disbursed it as follows (Statement showing disbursement of \$600 omitted.)

82.

Letter dated Portland, Or. 1-24-11 to Gentlemen by Geo. C. Hodges.

The check you gave me last Saturday came back no funds. I wired you today to send me a certified check so I can deposit it at once. I hope you did; if not do so at once send me check for \$68.00 the amount of the last check. I went to order the telephone to-day and they wanted \$15.00 in advance. I did not have the price so did not order the phone; \$5.00 for the year and two months in advance because you handle real estate; it is a rule they wont break for anybody, so you see the situation and how I am fixed.

83.

Letter dated Portland, Oregon, Jan. 27, 1911 to Mrs. F. D. Cooney, Ballard, Wash. by Oregon & Washington Trust Co. by Geo. C. Hodges, trustee.

Replying to your letter of the 26th inst., relative to bonds of the Columbia River Orchard Co. We investigated this project before we accepted the trusteeship of these bonds, and in our judgment it is safe from an investment standpoint. We held as trustee \$125.00 worth of first mortgages for each \$100 bond issued by this company, which makes the bond purchasers an investment guaranteed by the first mortgages which we held, and further these bonds are guaranteed by the Washington Orchard, Irrigation and Fruit Company. Under these conditions we consider the investment safe.

84.

Letter dated Portland, Oregon Feb. 9, 1911 to DeLarm & Biehl Seattle, by Geo. C. Hodges. I enclose a lot of worthless paper that is signed up and no good, and I am going to appoint a guardian for both of you so that you can not make such mistakes any more, for these things hurt your credit thousands of dollars and it refers to everybody that is connected with the firm. Now gentlemen for God's sake don't give any more checks unless you know the money is in the bank, and has not been checked out by the other one. I have a letter from John Reinboth, in which he tells me you gave him a check for \$75 and he found out it was no good. I suppose for the same reason the others were no good, and caused him no end of trouble, and consequently he feels very blue about the whole business just now.

85.

Letter dated Portland, Oregon, February 11, 1911, to DeLarm & Biehl, Seattle, Wash., by Geo. C. Hodges. I have one deal over today, and the abstracts in our hands to be examined, where we took in an equity at \$1500 on 100 acres of good timber that is said to cruise 5,000,000 or 6000,000 ft. There is a mortgage against this for about \$4,000 but we had to start something so this is the first thing we started, and we paid the equity in bonds, and we think we can turn the timber over immediately for a clear house and lot. We have two or three more deals that are waiting absolutely on the trust agreement. Now we have everything in fine shape down here, with the business coming up fine, if we had the where-with to do something with. I want that trust agreement and I want it bad, and I want some money to pay the rent down here, and my hotel bill and the office girl. I know that you are pretty hard pressed and we are worse than you and you must relieve this situation, and must not keep these people waiting here and I have refrained from writing as long as I could. I am going to stop writing very soon, and adopt your tactics, without ever writing anybody anything. I guess you think that is the best way to do, but I have never found it satisfactory, but I guess it is.

86.

Letter dated Portland, Oregon, Feb. 14, 1911 to DeLarm & Biehl by George C. Hodges. The water is

just up to our neck now, and if we do not get relief, we will have to go out with the flood, tomorrow. I mean by that, that we are asked to vacate the offices on the 15th of the month. The agent is very nice and said he did not want to put us out, and asked me as a gentleman, to either pay the rent tomorrow or to move out of the buildings without any trouble, and I promised I would do so unless there is something that comes through today or the first thing in the morning we will have to pack up and get out. This afternoon I received a letter from Mr. Biehl inclosing a copy of the trust agreement of the Washington Trust Company and \$5.00, there was a bill left this morning for \$4.65 and an express bill this afternoon for \$.55 so I am \$.20 worst off than I was this morning. I do not need to tell you I am living off of borrowed money now and have been for some time. The trust agreement that Mr. Biehl sent does us absolutely no good in the world, because the bonds that we have refer to the trust agreement and the lawyer wants to see the very trust agreement before he will advise his clients to accept the bonds. Mr. DeLarm told me on the phone Sat. night that the trust agreement would be sent the next day which was Sunday, that it was signed and already and I have not had it yet.

Now this might appear a little bit of a thing, but it has gotten to be a big thing down here, there are two or three deals pending on this and we cannot put them off much longer. We have lost the apart-

ment house deal now, at least the lady has gone to California, and will not be back for a couple of weeks, and they will all go by the way when we promise them every day and cannot deliver. We have a letter from a real estate man in Salem that says that the place is worth about \$25,000 and he can place about \$8,000 mortgage on it but he would not place \$10,000. What shall I do in regard to this matter.

87.

Letter dated Portland, Oregon, Feb. 15, 1911 to W. A. Burleigh by Geo. C. Hodges. (Same statement as in No. 83.

88.

Letter dated Portland, Oregon, Feb. 21, 1911 to DeLarm & Biehl by Geo. C. Hodges. Enclosed find the trust agreement, signed and returned as requested.

89.

Letter dated Portland, Or., Feb. 24, 1911 to C. H. Graves, Monroe, Wash., by Oregon & Washington Trust Co by Geo. C. Hodges, trustee. Same statements as in No. 83.

90.

Letter dated Portland, Or. Mar. 1, 1911 to DeLarm & Biehl by Geo. C. Hodges. Please send me at once about twenty bonds and also send some more securities to cover those bonds that we sent you. Now this is important because we must not be caught short of securities it would ruin us absolutely and the bank

examiner does have the right to examine trust companies and we will be about the first one that he will take up because we are the newest and there is beginning to be a lot of talk about us all favorable but talk nevertheless. We put over another deal for \$2000 *wort* of timber. We paid \$1200 for the timber and \$7000 for the mortgage that was on it and \$100 commission on the deal. The deed will be made out tomorrow morning and the people will sign up at eleven o'clock. I think the Tobey deal will go through like a top, they have brought down their abstracts thirteen in all and Mr. Humphrey is examining them. I think I got on to a *might* fine line yesterday afternoon, I will close a deal with a dunkard for ten acres of Wahluke land and taking in exchange his homestead of 160 acres *nor* far from Utopia for \$3000 and he assumes the balance and through this fellow I will get his father, his brother-in-law and two brothers, some of them for exchanges but nothing only clear property taken and some cash on the deals beside it will be a colony of dunkards on the Wahluke land and that will go on immediately and improve it and get a crop this year. Now I consider this mighty good business because they are a mighty nice class of people to get over there, and I may have to go up with them the last of the week and close up the other two deals at Pasco and go with them up to Wahluke because Brown & Kopin killed the Virginia man entirely but if you will write me a letter guaranteeing completion of the ir-

rigation plant and that a sufficient supply of water will be given on this year I can close with the Virginia man now. Now do this at once if it is possible. Please send some cash as we are clear out here and must have some money.

91.

Letter dated Portland, Oregon, March 3, 1911 to DeLarm & Biehl by Geo. C. Hodges, Seattle, Washington. We received the following letter this morning. Please advise us what your wishes are in the matter.

March 1, 1911.

Oregon & Washington Trust Company,
Portland, Oregon.

Gentlemen:

This is to notify you that the Columbia River Orchard Company has not paid the interest on its bonds, Nos. 95, 96, 38, 85, 87, 35 and 86, according to the coupons therefore, all of which were due November 1, 1910. These bonds and coupons belong to our clients, J. G. Taylor and O. W. Little, and we hereby request that you at once proceed to foreclose the mortgage held in your name as trustee, as security for the payment of said bonds and interest, in order that the claim above mentioned may be satisfied.

DOUGLAS, LANE & DOUGLAS.

92.

Letter dated Portland, Oregon, March seven, 1911. to DeLarm & Biehl by Hodges.

I have an opportunity to buy some Ykakait lots and it strikes me that the lots in Ykakait might be a good thing for us to fill in trades with bonds, that is, if we can get them in lots of five and ten in different blocks, which I think I can do. Of course they are all encumbered; clear deeds with each lot or bunch of lots. They can be gotten I think at the rate of \$20.00 apiece by taking as much as \$3,000 worth and up to \$5,000 worth. I can trade bonds outright for the lots. My idea is to get them in different blocks and in bunches of five or ten, or perhaps larger as we desire.

93.

Letter dated Portland, Oregon, March 14, 1911 to S. C. Douglas, Seattle, Wash. by Oregon & Washington Trust Co. by Geo. C. Hodges, trustee (Identical in language with No. 23 except last paragraph of No. 23 omitted.

94.

Letter dated Portland, Oregon, March 21, 1911 to C. H. Graves, Monroe, Wash., by Oregon & Washington Trust Co., by Geo. C. Hodges. Your favor of the 18th in hand and note your inquiry as to the market for bonds and will say that we are only the trustee for the bonds and cannot inform you as to their market value, only that we have never heard of them being sold for less than par.

95.

Letter dated Portland, Oregon, March 29, 1911 to DeLarm & Biehl by Geo. C. Hodges, by P. M. D.

I have arranged the matter with Mr. Sherlock here. He is to accept all the \$2800 in bonds and then we are to buy back \$500 of the bonds not later than Saturday. The Kilbournes went to the ranch today and will be back tomorrow, that is C. A. will and E. C. will go to Wahluke. I will sign the bonds and get them to you tonight.

96.

Letter dated Portland, Oregon, March 31, 1911 to DeLarm & Biehl by Geo. C. Hodges. Mr. H. is about to make a deal for the California property and will need at least \$2500 worth of bonds, perhaps a little more. Now I don't believe it would be a good idea unless we would get a mortgage on the property for the amount of the bonds, or say a mortgage on the property for the amount of the bonds but \$500, and allow him the use of \$500 in bonds and charge that to him. I think we will get a deal over today or tomorrow.

97.

Letter dated Portland, Oregon, April 3, 1911 to J. B. Lowry, Cashier Citizens Natl. Bank, Chattanooga, Tenn., by Oregon & Washington Trust Co. by George C. Hodges; (Identical statements as in No. 23, and adds: As to the market value of the bonds we have never known them to sell less than par. However, that will be enhanced by April 15, when the water will be turned on the irrigation project. We consider them a good investment considering the standing of the company, etc.

98.

Letter dated Portland, Oregon, April 4, 1911 to DeLarm & Biehl by Hodges.

We closed the deal on a small motor today for \$600 in bonds and have one on for a large one which will be either closed tomorrow or the deal will be off. I have at last pacified the man Sherlock, so we will hear no more of that, pending the final adjustment of the affairs on Saturday next.

99.

Letter dated Portland, Oregon, April 4, 1911 to DeLarm & Biehl by Hodges.

Now I would call your attention to the advertised sale at Ephrata, county seat of Grant County, of the ten acres in section ten, for the \$495 judgment which I gave Mr. Biehl a copy of the same when he was here. Be sure to give this your immediate attention, if you have not done so.

100.

Letter dated Portland, Oregon, April 6, 1911 to DeLarm & Biehl by Geo. C. Hodges.

I sent you last night \$50,000 worth of bonds, that is, ten \$5,000 bonds by express. Now, I want you to send me nine \$1,000 and ten \$100 worth to close up some immediate deals. We succeeded in closing the Rose City deal last night, and the taking up of the mortgage on the timber lands that we bought, the first deal we made, at \$1500, you remember. When this deal is straightened out we will have a man's farm which we bought for \$9,000, and which adjoins

that same tract. This deal will be closed up about next week and we want the bonds not later than Monday.

101.

Letter dated Portland, Oregon, April 7, 1911 to DeLarm & Biehl by Geo. C. Hodges.

I am rushing everything to a finish in that timber deal and we will try and get some action on that thing right away. I have got both the lawyers here in town chasing after the man.

102.

Letter dated Portland, Oregon, April 10, 1911 to Wm. Crawford by Oregon Washington Trust Co. by Geo. C. Hodges. (Identical with No. 23.

103.

Letter dated Portland, Oregon, April 27, 1911 to C. M. Joseph by Oregon & Washington Trust Co. by Geo. C. Hodges. (Identical statements as in No. 23.

104.

Letter dated Portland, Oregon, May 1, 1911 to DeLarm & Biehl by Geo. C. Hodges.

There has been about \$500 coupon or perhaps more than that presented for payment today on the Columbia River Orchards bonds. It would have been very much better if we had had the money here, and had been prepared to take up these coupons at once. As it is, the first fall out of the box, when the Oregon and Washington Trust Co., should have come to the front they failed. Now I hope that you will not al-

low this to happen again. The timber cruiser got back this morning and reports favorably on the timber tract. We have the privilege of going and *investigatin* the ranch and the sheep and the man has the privilege of going and investigating the land but not the bonds, so we will go over there about the last of next week and then one of us take him right up to Wahluke and show him up there and send him back down to Portland to close the deal. I think the timber deal will be already to go over about Wednesday, but will let you know about that later.

105.

Letter dated Portland, Oregon, May 10, 1911 to W. E. DeLarm by Geo. C. Hodges.

I am sending you description of the sheep ranch, with a copy of the agreement for purchase, with a proviso, that the man has put in it. It just came today to me. Now look this *think* over carefully so that you may be able to tell me *that* you think about it when you come down on Saturday. I have seen your man, Mr. Burkhard, and he brought his man in to see me this morning, and we had a long talk, he then brought his lawyer in to investigate the bonds. The deal looks good and think it will go over. The deal is for \$38,400. He prices his land at \$60 an acre. I will know about this in a day or so. I have another deal on for \$13,000 on that ranch adjoining the Tobey Bros. It may go through taking it at \$20 an acre. I trust that you will have everything

in shape to convince these Eugene people. If so, that deal will go over like a top.

106.

Letter dated Portland, Oregon, May 15, 1911 to DeLarm & Biehl by Geo. C. Hodges.

I am very sorry that Mr. DeLarm was not able to keep his engagement that he made *yesterday* for 4:00 o'clock, for I had arranged for him to see seven men, and among them was the Tobey's, and two of the others were the sheep men, and the other three were on other propositions which I had hoped to take up with him after the others had gone. There was altogether, deals to the amount of a little over \$250,000 involved. All of the men went away disgusted and some of them pretty mad, after waiting until 7:00 o'clock, and as for me it *knocked* me out so completely that I was sick all night and hardly able to be up this morning. The situation down here, to put it lightly, is critical. In the first place we have no money; and in the second place they are urging me to go over today or tomorrow to see the sheep ranch. They want that deal closed now, or not at all. I haven't even the money to take the trip. Montgomery is here today and I don't know what to do with him. The man on the Oregon City farm deal was in this morning, and he explained all the details to me. He is willing to accept the bonds immediately, but he must have \$2500 to get the deed out of escrow. Now he must be allowed to place a mortgage for that amount, or we will have to loan

him that amount on the bonds, or he cannot deliver it otherwise. Let me know immediately about this. I will take Montgomery out to see that tomorrow, as I can borrow \$10.00 from Brazell to do that. Leet goes down to the timber deal today and Hammet goes with him and if they come up here to investigate, I will have to handle them the best I can. Mr. DeLarm even neglected to sign and fill out the contract which I am enclosing for him to do. I also inclose three Oregon and Washington certificates for Mr. Biehl, Mr. DeLarm and myself, for Mr. Biehl's signature, and I think these had better be endorsed by you both, so they can be placed to the credit of the directors we *wlect*, and let the company still hold the certificates. We will elect Mr. Wright a director but we haven't another man for the other place, unless it is Judge Garretson, and we havent heard anything from him. Can you tell us anything regarding that?

The question of finance stares us bitterly in the face. Mr. DeLarm gave me a check for \$50.00 and \$20.00 in currency, while here, and I expended \$3.50 for taxicab fare and \$3.75 for railroad fare, and I have the balance of 2.75. The other went to pay the rent, that is \$50.00 and the stenographer, \$9.00. This is the day that I had signed up for the Puget sound to move in the Yeon Bld., therefore I am embarrassed another time as I haven't the money to pay the first month's rent of \$30.00 and I don't know how long they will wait. I have loaned the company, as it is,

\$210 and have got today just enough to buy my lunch. This is the situation just as it is, and I expect the Tobey Bros. suit to be brought at once.

107.

Letter dated Portland, Oregon, June 21, 1911 to Mr. H. E. Wood, Eugene, Ore., by Geo. C. Hodges.

Mr. Hammet was just in, and I told him what I told you this morning, that we wanted 50,000 acres of that timber land, and will give \$20.00 an acre in bonds and \$5.00 an acre in cash for same. Now I think that he and you could get this amount. I am figuring it this way, Mr. Wood, that you would be entitled to 5 per cent of the bonds on each hundred and sixty, which would be \$160.00 and 5 per cent in cash, which would be \$40.00 netting you \$200.00 for every claim you sign up. Now, Mr. Wood, this is the biggest proposition that ever came to you, my boy, for there is a chance to make \$50,000 in bonds and \$12,500 in cash, which would easily put you boys on easy street, and you can do this if you want to, and all we will bind you down to is there must be 45,000 feet to the acre. Of course the company will go through with the other deal if you desire, on the same basis that we took the last one on, or you can put the rest of the people, in Albany, in on the new deal if you desire. It don't make any particular difference to us, which way you do it.

108.

Letter dated Portland, Oregon, July 27, 1911 to DeLarm & Biehl by H.

Mr. Biehl has just phone me that he wired me \$100 today. I haven't got it yet, but suppose I will receive it later. Now this \$100 is all spent before I get it. I am just as bad off now as I was before. I have friends here in town and haven't the money to buy them even a decent dinner. I tell you it is pretty humiliating I didn't ask him to send me more money, knowing he would if it was possible. Now fellows I don't know what we will do down here if we don't get money, even a little bit. I will have to have more money right away in order to pay the telephone bill or, have the phone taken from us also the Western Union and other things are up and worrying me all the time. I haven't the heart to do anything and scarcely the inclination. Brokers are advertising bonds at five and ten cents. which has killed all of the deals and things are in pretty bad straights down here. Tell me when the water will be on.

109.

Letter dated July 28, 1911 to W. P. Rauch, Roseburg, Ore., unsigned.

The only report I have to make about the bonds is a good one, and that is a Seattle syndicate is trying to buy up the whole lot, offering seventy-five and above that amount, but I am still interested in turning my bonds into property, so if you can make any deal down there, either for timber at seventy five or good real estate, orchard land, preferably improved orchard lands, it would suit fine.

110.

Letter dated Tacoma, August 17, 1910 to W. E. DeLarm, Seattle, by Geo. C. Hodges;

Reports a number of prospective deals adding: Now I have given you a synopsis of the whole business and all the details so that you can see what we are doing that we may force everything to the limit. Mr. Dean and I didnt get to our beds last night till between 12 and 1 o'clock, we are allowing no stone to go unturned.

111.

Letter dated Portland, Oregon, August 18th, 1911 to DeLarm & Biehl by Geo. C. Hodges.

I beg to notify you that a special meeting of the Board of Directors of the Oregon & Washington Trust Company, called last evening for the purpose of acting upon my resignation as President, Treasurer and trust officer and director of said corporation, my resignation of all the above named offices was accepted; and said offices were declared vacant and so remain at the present time. I enclose herewith certificates of stock representing 65 shares of the capital stock of the company; and have placed the remaining one share in the hands of the secretary for the purpose of being turned over to whomsoever shall be chosen my successor in office. I trust that such successor shall be appointed at once for your own best interests. I feel that all of said stock belongs to you for the reason that it was your money with which the same was purchased. My reason for

resigning is that I feel that I will be able to render you more effective service along a different line. I have served the purpose for which I came here; the bonds are all disposed of; and there is nothing further to be done in this field, as we decided to discontinue trading at the office some time ago.

This action on my part may come as a surprise to you, but I have been carefully considering such a course for some time. I have been getting further in debt with each succeeding day, with no relief in sight. Your promises have been numerous and ever failing; so much so that I can place no reliance whatever in them. That you have done as best you were able under the circumstances, I have every reason to believe, however even the best intentions are futile and unavailing before an avalanche of debts. I could see no relief whatsoever in sight.

Mr. Derby has just paid his \$1000 note, which he gave at the time he made the loan on the property which Montgomery is to have. Derby informs me that if we will repay the money advanced by him, with a reasonable rate of interest, he will turn the property back to you; provided of course, that he has not disposed of the property in the meantime. He states that he does not desire to keep the property himself. By obtaining this money from Derby. I have been able to pay all the bills that the company owes in the City of Portland up to date; that is, I was practically able to do so. I advanced about \$98 from my personal funds; and it is a source of satis-

faction to me to know that I am leaving with no bills unpaid. I enclose herewith a statement showing the disposition of the money expended. The keeper of the boat and the party who held the mortgage on the same have been constantly harrassing and threatening us with suits; but with the use of the Derby money, I was enable to pay them both in full; and put an end to the impending suits. If nothing unexpected happens I will sell the boat tomorrow for a piece of property, and send the deed to the same in blank to you. The taxes are to be paid, and the abstract brought down to date, and the property is clear of incumbrances. I enclose you description of a piece of property in Eastern Oregon, for which the parties are willing to accept \$200,000 in bonds, the cash value of the property. I recommend that you put this in the hands of someone who will make the trade immediately and caution you in the selection of one to handle the proposition. Don't allow Mr. Humphrey to know anything about this deal until it is put through. Mr. Biehl knows I had \$10,000 worth of bonds on hand which I was holding for the Puget Sound; but I turned the same over to Mr. L. A. Smith, and taken up the order Mr. DeLarm gave him on me, deeming it best to have the matter straightened up with Smith, as he was threatening suit. I wired you today to send Mr. McWhorter down in the morning and trust that he will be here at that time. I leave in the morning for a little trip to the coast to try to get myself straightened out. I

am all run down at the present time. Trusting that you realize that the action I have taken with respect to the company is for our mutual best interest, I am with kind regards. There is in this office \$218,000 worth of blank bonds.

112.

Letter dated Portland, Oregon, Sunday directed to Dear DeLarm or Biehl by Hodges.

The checks Mr. D. gave me while up there are both protested, and I deposited one in one bank and one in another and drew against them, and the banks are raising Cain. Wire me \$100.00 Monday A. M. that was the amount of the checks. Humphrey tells me *Fox* got two checks and they both were bad and he is going to pull off all his men. Wells says not one thing has been done about the power and they are going to break camp and let 100 men go Monday. I must have \$800.00 for the *Mischol* deal on Tuesday or we *lose* all these things and \$200.00 that is up. Tobey—are raising h— down here for the money that was promised *then* the 15th on a part of their contract; call me the first thing in the a. m. I tried to get both all day.

113.

Letter dated Portland, Oregon, Tuesday 21, 1911 to Dear De by Jack.

As per wire to you this A. M. saw Baum. He does not wish to make trouble and if you will make the 30-60-90 day notes and interest added for the time since goods were received with his Seattle lawyers

and tell them to call him up on phone, think it will be O. K. I told Baum that if he got receiver for co. he could not be preferred creditor but would only share with other non-secured creditors and I could only guess what he would get—sabe? Say same to his Seattle lawyers.

114.

Letter dated Portland, Oregon, Noon, Tuesday 17th to Dear De by Jack.

That *Plummer* fellow N. P. is some slippery customer. Nothing disagreeable at all, came up in our conference, so he is lying for some reason best known to himself. My personal opinion is that he is out for graft on the side. If you push him you will get what you want. He has also probably taken offense because Chapman got letter from Cooper to him. I know the Sammon's deal is good enough to put up to any bankers. Why, it's guaranteed by the Government when Chapman lands contract. Wish you would make the best deal possible on Interlaken House. If there is a judgment against me, see that it is taken care of in this deal, and do it quick. Have a deal smoking here that promises something good for us. It's not so big, but good. About \$60,000. Simply get interest in it, but in a short while can bank it. Expect to go down on the electric line tomorrow on a small farm deal. I could make a thousand deals on equities, but you know I cannot use them here in my scheme. I must make deal of some kind for expens-

es soon. This town has Seattle skinned a city block when it comes to being tight. June bonds at $1\frac{3}{4}$.

115.

Letter dated North Yakima, Wash. 8-10-11 to Dear De by Jack.

Came here under expense to look up Burrow's offer for Interlaken House, and try to make quick loan or sale and find it the worst kind of a lemon. If a mortgage for say \$3500 could be made on it & sold or traded in Seattle for something worth while, for some money, why O. K. Rose could be arrested for making the representations he does about it. Learned here that Strahorn fell down because the R. R.'s only sell land to folks who have ditches already in. Have sold all land here for \$10 per acre. Also learn that any irrigation company gets all lands not filed upon for a nominal fee in consideration of putting in a system. This applies on all Govt. land. A number of the filings at Wahluke can easily be disputed. I believe I'd look it up. Will be in Portland tomorrow A. M. This section is as dead as h))l. Am using all the *physic* thought pull I can on Clapp deal.

116.

Letter dated Portland, Oregon, 8-19-1911 to W. E. DeLarm by Jack.

Glad to hear the Plummer deal is coming O. K. Matters are getting warmer here and its a case of sitting on a very hot lid. I think you understand why it's so hard for me to help myself financially. Lord? I'm short of cash.

117.

Letter dated Portland, Oregon, 8-21-1911, Monday P. M. to Dear De by Jack:

Recd. a call from Montgomery's atty this A. M. Montgomery has left town and is somewhat peeved, also the atty. If it is possible, it is very good policy to dig up the \$50. and notes of the W. O. I. & F. Co. as per agreement to avoid sudden law suits both from them and Derby. They are now in communication with Derby trying to incite a riot.

118.

Letter dated Portland, Or., Tuesday 5:30 P. M. 8-22-11 to Dear De by Jack.

Am trying to get you by long distance. Have rounded up a few clear deals running from \$3000 bonds par to \$6000. Very good local traders & perhaps a loan value, am seeing to that. Humphrey's architect friend has tears in his eyes, so have decided to throw him the 10 lots in Astoria for *his own* bonds and wounded feeling.

119.

Letter dated Portland, Oregon, Aug. 23, 1911 to W. E. DeLarm by Jack.

Pursuant to instructions I have tied up section of lands so far as I have been able to. I got wind of \$100,000 swap in California this afternoon and I am hot after it. It is an improved, clear of incumbrance, about 8 miles from Los Angeles. It is recently inherited piece of property and—if,—party bring man up this afternoon I will get a night letter

off to the bank, where the family has been banking relative to immediate loan value, and believe me, if I get the O. K. the train won't travel fast enough to carry me down, and I will wire the stuff to Seattle. If I get good news relative to this will send a long distance call or wire.

The Tobey Bros. were in and we had an extremely amiable meeting, with no promises from me. I believe they are satisfied with the conditions, and I believe I shall *ge* along very nicely, I know. That man Humphrey has done us more harm in Portland than you *dan* ever realize. He was the first man (and I know it now) to peddle the bonds at any price for a meal ticket, and at the same time referring himself as forking for this office. I think out of about thirty broker I have talked to, I think about twenty have told me this same story, and believe me it has made a hard fight for us. The moment we can we must clean him and kick him out. If possible pay the Bent Piano Company on Third and Pike some money for me, as I am in a very dangerous position with them, I think you understand what I mean.

120.

Letter dated Portland, Oregon 8-24-11 to Dear De by Jack:

Signed up section on peculiar terms as per enclosed contract. Also ten acres unincumbered. This is in cultivation, and a very fine piece surrounded by orchards, no improvements and no irrigation necessary. Have \$6,000 or \$600 per acre. Am after

either loan or sale of same. Looks good, but you know it sometimes takes time. More deals on the table but it takes sifting. Am hot after California deal. The prodigal son who inherited this on the rampage (soused) and am somewhat delayed. Saw party ref. 12,000 acres, and it is progressing *fact*. It will cost \$50 plunks for the trip me and other broker who is broke. I might run short. Mullin of Seattle knocked a \$300 cash deal today for me, which was practically landed. That I figured for DeL & B. personal expenses but - - ? Am getting a line on some good outside deals and hope to shoot at least some cash over before the 1st of September. Lord knows I am working. Between Mullin and the other crooked brokers, the market for Portland property is N. G. Must get outside, where there is some good stuff too.

121.

Letter dated Portland, Ore., August 25, 1911 to R. S. Chapman by A. J. Biehl, directed to Seattle, Wash.

Have just secured option on gilt edge \$100,000 swap, so you see things are moving on this end, and look very good for DeLarm & Biehl, and am thoroughly satisfied that the Chapman, DeLarm & Biehl combination will yet materialize.

122.

Letter dated Sept. 1, 1911 to W. E. DeLarm by Jack.

Pursuant to conversation, got Columbia River Wa-

ter Company's certificate signed and away on 12:30 train, that will reach you this evening. Regret my neglect in this matter, knowing the hard game you are up against, but didn't think this was essential. I am hoping for the best. Tied up with a deal today for an improved ranch in Willamette Valley. Cost \$20,000 with \$5,000 mortgage. A dandy place, one half mile from town and railroad. I am satisfied I can sell for a few thousand cash difference quickly. Another deal offered me where there is \$700. Looks good, and guess I will close, but can only put deal over in escrow, pending delivery of bonds, and I sure need bonds. If I had them now, I would go down the line good. Am getting perspective of the real estate in and around here.

123.

Letter dated 9-3-11 to Dear De by Jack.

The whole d—d Biehl family was on the brink of hungry town when the phoned money arrived. \$9.50 for room rent, \$3.40 borrowed money, leaving \$6.50 for us. Am supposed to look at a 190 acres partly in orchard and improved, two houses ranch tomorrow but as car fare is \$5.40 cannot go to close. Get those bonds to me sure anyway so I will have 'em by day after tomorrow A. M. Lord! how I want bonds. If you have to steal it, get me enough money over living expenses to get out and close a deal or two and get some mazuma in the bank both here and Seattle. Am not asking because I cannot get it out of deal, but by Heavens! I'm blocked completely, no bonds,

consequently no money. Absolutely nothing to start it. When you have Fox matter arranged, if only for a week or two, you can look to me for some of the "Necessary." Can get it here for the company without sacrificing, and it is better to get it that way. My aim is, and I know that yours is, to see that the company gets itself in a position to retire as *may* of the bonds as possible before the price goes up, as it is certainly and beyond question the only business-like thing to do. A lot of the brokers, both here and in Seattle, who have received bonds as commissions for making deals, sell them for whatever cash price they can get when they get hard up, and that hurts the bonds and the company. The big deal I have tied up for you will certainly place you in position to pick up a wad of them, and reduce the outstanding bonds very materially. Please don't think am asking too much of you, but get that additional remittance over the plate for reasons stated. You will be thankful if you do. Also the bonds by Wednesday A. M.

124.

Letter dated Portland, Oregon, 9-11-11 to Dear De by Jack.

Thanks for the \$50. If new June bonds are issued to replace February's refunded some one else besides myself must sign as secretary as you understand it must in John Day River deal. John Godfrey might do temporarily—see. This deal looks sure, so as soon as you can either get the mortgages together or enough February's in, print the *Hunes*

from it and let me close. It's a peach. Am rooting for you on the Fox deal and if mental telepathy will do any good, she's a go. Am after the Yamhill Co. farm out of which expect to get something. Certainly hope as I know wjat kind of h—l you are raising to get it in Seattle. This is the only real good place to swap. A week's trip with a bundle of them into the bush, and it would certainly get the money. Keep your nerve and forget the knockers. .

125.

Letter dated Portland, Ore., Oct. 11, 1911 Thursday 7:30 P. M. to Dear De by Jack:

This trust co, thing is about the hottest lid I ever had the misfortune to sit on. Am really fearful of making deals, but am *lingin* up outside brokers. The Yakima trip cost \$20 and was a wild goose chase, rotten? Burrows is careless about his statements. Stalled Baum of the Pipe Co. here today. He states he does not wish to make any trouble at all but would like a little encouragement. It made him sore when you didn't keep the engagement with him in Seattle. However, sufficient unto the day. You know I am perfectly willing to stand the gaff here in every direction. Got a copy of wire to you from Chapman stating that either he or Ross would be in Seattle Thursday (today). It was sent from Minneapolis. It sounds like business. Of course Montgomery's lawyer is getting batty, says if it is not closed this week will *deman* more. If you can, all right, if not, guess I can stave it along awhile longer. Honestly,

I feel like jumping in the river. Talk about a ragging, I guess I am getting all of that nervous stuff that Hodges could will to me. Had hoped to rustle the coin for this end before this, but developments requires extreme care on my part, and am reserving the right to use it for obvious reasons .

126.

Letter dated Friday, Oct. 12, 1911, Portland, Oregon to Dear De by Jack.

You will get an inquiry from a lawyer named Imus from Kolarnus ref. the bonds. This seems to be virgin territory and think will begin to get some results from the first 2 side trips even if the leads were lemons. On account of expensive Yakima trip and this last one, along with the regular expenses am down to \$13.00 again. My room rent is due tonight, also the girl \$9.00. I dont need *bu* little until I can get a deal over. I told the Imus lawyer about mortgages & guarantee behind bonds & gave him name of W. O. I. & F. Co. I want to keep on making quiet little trips out as it is leading up to some good business that I can handle without fuss on this end.

127.

Letter dated Portland, Oregon, Oct. 25-11 to Dear De unsigned.

Tobey's were just in and asked me to write to you and ask you to make them a proposition to exchange their bonds (Feb. \$140,000) for land planted to alfalfa. Any time next year will do just so it is planted next year. Have received no word from you refer-

ence to Seattle director in Trust Co. It is certainly just that the Orchard Co. should have a director friendly to it in the Trust Co. on account of heavy business transacted by the Trust Co. for it. I would suggest Burrows or Nutter. Day and myself here making three in all.

128.

Letter dated Portland, Oregon, November 14, 1911 by Jack.

F. L. Evans, a real estate broker of Salem, Oregon, called this morning and claimed to bought bonds for cash from a credited representative of the Columbia River Orchards Company with written authority to sell bonds. He insisted that the company was responsible and unless they bought his bonds (he has 3,000 of June issue) he would start proceedings against all three companies. I told him to get busy. Finally he decided all he wish to see was the Trust Agreement. I told him it was in Wright's hands and I would get it back in a few days. What I want to know is, where is this trust agreement? I don't seem to be able to locate it down here. If it isnt here, send a copy. It looks bad when I cant show it to people here in the office. Of course I shall never let it get out of my hands. From what Jackson told me when here Chapman's timber man from Chicago had positively agreed to put up a million dollars on the timber syndicate. Why is he hedging to you?

129.

Letter dated Portland, Oregon, Nov. 22, 1911 to De by Jack;

For Lord's sake get something out of, or make a raise for us Interlaken deal. We are up against it good for cash. It is impossible to raise anything on Wash. property here, or would say ship it down. Yours truly can get along but the rest cannot. I think you will understand how urgent it is.

130.

Portland, Oregon, December 15, 1911, letter to F. W. Waters by Oregon & Washington Trust Co. by A. J. Biehl trust officer.

Same statement as Ex. 23.

131.

Letter dated Saturday Portland, Or., to DeLarm by Jack.

Knowing how hard money is to get in Seattle I hesitate to ask for it, but I simply must I am flat broke, Have borrowed to the limit, I mean money for house necessities, not clothing or luxuries. My hands are tied here as trustee as you know. Have had some hot scraps this week. You are allowed to raise money in ways I cannot.

132.

Letter dated Portland, Oregon, Dec. 26, 1911 to W. E. DeLarm, Pres. Columbia River Orchard Co., Seattle, Wash. by Oregon & Washington Trust Co. by A. J. Biehl.

I find upon examination that the following list of

Water Mortgages are not notaried and properly assigned to the Trust Company. Please have this done at once and return as soon as possible. I accordingly expressed them to you today. (list of 14 on upper level given. I must have mortgages or a proper record of them.

133.

Form of land certificate.

This is to certify that the Washington Orchard Irrigation and Fruit Company, a corporation of South Dakota, in consideration of the sum of seven hundred fifty dollars to it in hand paid of which receipt is acknowledged as payment to it in full, does hereby agree to sell and convey toor his assigns, on or before April 1st, 1912, five acres of land under and capable of being irrigated by its irrigation system at Wahluke, Grant County, Washington, and deliver a certificate or abstract showing good title in the company together with a certificate entitling the purchase to the perpetual use of water from the canals and laterals of the company's etc. (provision for payment of water rates omitted) Provision for surrender of certificate, locating land, and getting deed, etc., omitted. Provision for written notice of assignment. Signature of company.

134.

Deed by Mary A. Domay to Washington Orchard Irrigation and Fruit Company executed April 29, 1911 to SW $\frac{1}{4}$ of SE $\frac{1}{4}$; the E $\frac{1}{2}$ of SW $\frac{1}{4}$, the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Sec. 10, twp. 14 N. R. 26 E. W. M.

134½

Statement of assets of *Washing Orchard Irrigation & Fruit Co.* made to Mr. Sox by Biehl:

Assets:

Real estate Seattle	200,000.00
Real estate under project	200,000.00
Improvements on project	250,000.00
Water rights 10000 acres at \$100	1,000,000.00
Supplies on hand	3,000.00
Stock in other corporations	303,000.00
Two ranches	5,000.00
Treasury stock	100,000.00
	<hr/>
	2,061,000.00

Liabilities:

Capital stock	1,500,000.00
Bills payable	8,750.00
Due contractor	12,000.00
Due on real estate	28,000.00
	<hr/>
	1,548,750.00

Surplus 512,250.00

Irrigation project: 17000 acres along Columbia River, Grant County, Wash. 60 ft. lift, sold to settlers at \$100 per acre, pumping plant practically completed 9 miles ditch completed in 15 days.

135.

Seattle, Wash. Sept. 22, 1910. Columbia River Orchards Company to Kilbourn & Clark, engineers.

Summary of expenses for erecting pumping station at Wahluke, Wn.

Expenses prior to April 1, 1910 \$1375.33.	
March 10,	Chief engineer 35 days at \$15... 425.00
15,	Draftsman 32 days at \$5 160.00
15,	Surveying 22 days at \$7.50 ... 157.50
31,	Traveling expenses Asst. Eng.
	Jan. 33.50
31,	Traveling expenses Asst. Eng.
	Feb. 90.85
31,	Traveling expenses Asst. Eng.
	March 20.65
31,	Miscellaneous expenses 185.00
31,	Construction payroll Wahluke 183.75
31,	Stationery and blue prints 119.08
April 30,	Drafting of plants 3 days at \$5. 15.00
30,	Chief engineer's services 8 days
	at \$15 120.00
30,	Field engineer 1 mo. 5 days at
	\$100 116.65
30,	Invoice Puget Sound Bridge &
	Dredging co (3-31-10) 3,770.09
30,	Invoice Puget Sound do 1,902.30
30,	Invoice do payroll (4-30-10) .. 1,410.55
30,	Invoice Kilbourne & Clark co.. 933.55
May 31,	Chief engineer 12 days at \$15.. 180.00
31,	Asst. Eng. 10 days at \$7.50 75.00
31,	Field Engr Wahluke 1 mo. 100.00
31,	Invoice Puget Sound Bridge &
	Dredging Co (5-15-10)..... 4,375.28

	31, Invoices do (4-30-10)	1,092.38
	31, Invoice The Moran Co	487.29
	31, Invoice do	1,988.24
	31, Invoice do Kilbourne & Clark .	271.68
	31, Invoice Puget Sound Bridge & <i>Dredging</i> Co (5-25-10)	5,580.23
	31, Advances, Freight, cartage, etc.	85.07
June	30, Invoice Curtis & Co	450.28
	30, Invoice Crane Co	427.23
	30, Invoice Gorham Rubber co.	5.64
	30, Invoice Grant C.o. Abs. Col ...	17.50
	30, Invoice Holabird Electric Co. ...	2.60
	30, Invoice Keasby & Mattison Co.	281.46
	30, Invoice Grant Co. Abs. Co. ...	2.95
	30, Field engineers salary 1 month	100.00
July	31, Invoice Grant Co. Abs. Co.	35.00
	31, Invoice Puget Sound B & D Co.	4,667.55
	31, Invoice Crane Co.	231.77
	31, Invoice General Electric Co. ...	121.55
	31, Invoice Puget Sound B. & D Co.	1,533.86
	31, Field engineer sal. July.....	59.96
	31, Watchman's salary Wahluke...	56.00
	31, Watchman's acct Supplies	2.45
Aug.	31, Invoice Puget Sound B. & D. Co.	900.43
	31, Invoice Gen. Elec. Co. Motors etc,	1,625.00
	31, Invoice DeLaval Steam Turbine Co. pumps	1,600.00
	31, Watchman's salary month	70.00
	31, Watchman's acct. supplies	11.40

Sept. 20, B. J. Montgomery drayage ...	11.00
20, Watchman's salary Sept.	70.00
20, Invoice Moran Co. (Interest ac)	96.46
20, Open River Nav. Co. Ft.	25.85

36,284.58

Engineers percentage as per contract 25 per
cent added to total cost 9,071.14

45,355.72

July 15, by cash J. E. Hawkins.....1334.00
July 15, by cash Sam Archer 825.00 2,159.00

136. 43,196.72

Letter dated Seattle, Oct. 27, 1910 to W. E. DeLarm, Prest Columbia River Orchards Co. City. by Kilbourne & Clarke Company by M. P. McKercher, Auditor.

We are pleased to acknowledge receipt of one thousand dollars, proceeds of sale of equity in Lots 2-B, 32 Green Lake Home Addition. We have credited the account of the Columbia River Orchard Company, less deductions, as follows:

Recording deed to E. C. Kilbourne 1.25
Notary fee on E. C. Kilbourne deed to E. H.

Bartholf50
Excess taxed returned to E. H. Bartholf ... 17.58
Check to W. E. DeLarm100.00
Statement Osborne Tremper & Co. 6.25

125.53

Balance of \$874.42 was credited as above mentioned to Columbia River Orchards Company. Trusting that you will continue the good work, and that we will receive other remittances in the near future, we are.

137.

Letter dated Seattle, Wash. Nov. 8th, 1910 to W. E. DeLarm, Pres't Columbia River Orchard Co., from Kilbourne & Clarke Co. by E. C. Kilbourne, Manager.

Answering your inquiry regarding cost of completing plant and time of payment on the account rendered you Sept. 22d, will say that it will cost approximately \$5500.00 to complete the intake, install the motor pumps, piping and wiring, including freight on the machinery from the East. This does not include the pipe line from the plant to the canal. As regarding the time of payment, if we receive \$20,000 in cash within the next twenty days, we can arrange payments on the balance at the rate of \$5000 per month, beginning January 1st, 1911.

138.

Seattle, Wash. Sept. 20, 1910.

Received of the Columbia River Orchards Company deed from John Reinmuth and Lucile Reinmuth, his wife, to blank for lots 16, 17 and 18, Blk. 36 Coulters Add. to City of Tacoma. Kilbourne & Clark Co. by E. C. Kilbourne.

139.

Seattle, Wash. Sept. 20, 1910.

Received of Kilbourn & Clark mortgages of Frank

Clymer for \$16,000 and Wm. E. Stickels, for \$16,000.
The Columbia River Orchards Co., by A. J. Biehl.

140.

Letter dated Seattle, June 8, 1911 to Puget Sound Realty Company, attention Mr. Hodges, by E. C. Kilbourne.

Enclosed please find list of mortgages which were turned over to us by the Columbia River Orchards Company, and which we returned to them. We never had the two that Mr. DeLarm telephoned about, namely; Jas. Markley and Peter Fournier, he asked me to send them to you provided I found them. He also asked me to write to Nott at Olex, Oregon, letting him know that we had not expected to purchase his land. Mr. C. A. Kilbourne wrote such a letter in your office dictating it to your stenographer, and she sent a copy of the letter to to me. I am somewhat doubtful of the wisdom of my writing on top of the letter from Mr. Kilbourne, copy of which we enclose.

141.

Messrs. DeLarm & Biehl.

The mortgages turned over to us and which we returned were as follows:

80 acres James Perry & Wife	\$ 8,000
160 acres J. C. Koppen and wife	16,000
160 acres Frank Clymer and wife	16,000
160 acres Alfred Gagner and wife	16,000
160 acres W. E. Stickel	16,000
160 acres Virgil H. Robinson	16,000

E. C. KILBOURNE.

142.

Portland, Oregon, May twenty-nine Nineteen eleven.

Mr. Nott, c/o Wade & Wade Co. Olex, Ore. Dear Mr. Nott: When Mr. Kilbourne and myself were in Olex we had some little talk with you regarding the purchase of your 640 acres adjoining our property. Today in passing through Portland, I meet Mr. Geo. Hodges, President of the Oregon & Washington Trust Co. which called the matter against to my mind. We would like to have purchased your land, but conditions have so changed since we saw you that it would be impossible for us to make you any proposition this year. Several unexpected matters have come up and in addition we have had to buy about \$6,000 worth of machinery for the ranch, so that we will have *know* cash available for land purchases. If you can make any deal with Mr. Hodges, for the sale of the land for exchange in 7% bonds, similar to the Tobey deal it will be satisfactory to us, and possibly later we will be able to make some trade with him for some other property. I am just on my way to California and it is not likely that either of us will be able to be in Olex before the first of July. With kindest regards, I am

Yours very truly,

143.

Assignment by The Columbia River Orchards Company. This assignment is made merely for the

purpose of securing the performance of a certain contract made by the Columbia River Orchards Company on the 18th day of January, 1910 with Kilbourne & Clark Company of Seattle, and shall be *void* upon the performance of said conditions by said The Columbia River Orchards Company; and in case of a breach by said The Columbia River Orchards Company, the above mortgages shall be held as security for any damages which may be sustained by said assignee by reason of said breach; and upon the performance of said contract or the satisfaction of said damages said mortgages shall be reassigned to said assignor; but said mortgages shall not be further assigned with the written consent of The Columbia River Orchards Company.

Kilbourne & Clark Company

by E. C. Kilbourne, Vice President

Dated April 30, 1910

144.

Seattle, Wash, Sept. 21, 1910. Received of Columbia River Orchards Co. deed from Bertram H. Taylor & Geo. C. Hodges to ————— for lots 13 & 14 Blk 5 Palisades Addition to Seattle. Kilbourne & Clark Co. by E. C. Kilbourne.

145.

Letter dated Seattle, May 27, 1911 to C. M. Glover, Rock Creek, Oregon by E. C. Kilbourne: Yours of May 25th giving description of the land received. I have examined the 640 acres that is in wheat and believe it to be a fine tract of land. The other two pieces I have never seen, however, the price is too

high for us; We can get the adjoining land for \$12.50 per acre. We understand that it has not been cultivated for two years, and therefore is not worth as much as the other which is in wheat. The parties from whom we bought the Tobey ranch might be interested in securing yours and I have taken the liberty of referring your letters to them, they are Messrs DeLarm & Biehl in the Empire Bldg., Seattle, Washington, and they will probably write you. They have made some extensive purchases of lands in Oregon, and I understand they just completed a deal for several thousand acres of timber land. They bought the Tobey Bros. ranch and paid for same in bonds of the Columbia River Orchards Co. You might write them addressing them as above.

146.

Letter dated Portland, Oregon, Feb. 7, 1911 to C. A. Kilbourne, Seattle, Wash. by H. S. Wells, Ass't Mgr. New Business; I am writing you to confirm our phone conversation of this date in regard to closing power contracts with the Columbia River Orchard Company. I put the proposition, the Orchard Company taking 150 H. P. for 1911, 300 H. P. for 1912, 450 for 1914 and 600 for 1915, to our management, and the question as to whether we can accept this or not will depend on our receiving a report on the holdings of the said company. In this statement of their holdings we would like to know just what title they have to the land and if they do not have a clear title, what encumbrances there are. As soon as we can get this information, we will ad-

wise definitely just what we can do. Thanking you very much for your kindness in the matter, I am.

147.

Letter dated Seattle, Washington, Feb. 10, 1911 to Kilbourne-Clark Co., Seattle, Wash by the Columbia River Orchards Company: Replying to your request for a statement of the lands owned by our company, or on which *the* have mortgages for delivering water, we submit the following:

About 1400 acres of land in fee simple on which there is a part of the purchase price still due, of which there has been enough of the land sold to complete the purchase price and leave upwards of \$100,-000.00 Balances due on this is in the form of real estate contracts with notes attached. The company have mortgages for water on about two thousand acres more, all of which is to be supplied with water from the first unit of our system. The total number of acres coming under this first project is about 17,000 acres, of this amount 5,000 acres are railroad land, and the balance, in most instances, contracts have been made with the owners to supply water. In addition to the above, the company has real estate holdings in the cities of Seattle, Tacoma and Portland.

148.

Letter dated Seattle, July 7, 1911 to DeLarm & Biehl, Seattle, Wash. by The Kilbourne Co. by C. A. Kilbourne, Prest. Replying to your telephone inquiry of today we enclose herewith a separate sheet,

giving an inventory of the buildings, equipment and tools on our ranch in Gilliam County, Oregon. We have not thought of selling the ranch, as we believe it to be a first class proposition which will increase right along in value and earn a large percentage on the investment in the meantime. However, on account of a desire to settle up our partnership matter, we will consider any reasonable proposition *made* to us at this time. The land is situated in Gilliam County, Oregon, twenty miles south of the Columbia River, at an elevation of about 1200 feet above sea level. The soil is a rich volcanic ash, from three to seven feet in depth. There is no scab land on the place. The land is slightly rolling and is out by a sloping ravine and two or three draws which are fenced out for pasture land. A large proportion of the tillable land is level or nearly so, and all of it is smooth enough to be plowed by either traction engines or stock. There is a 7% mortgage against the place dated March 20, 1911, and payable as follows: \$5,000.00 in three year, \$5000.00 in four years and \$10,000.00 in five years. There is also a 3 years mortgage of \$2500.00 on a separate adjoining piece of land, consisting of 840 acres. The entire ranch consists of 5290 acres, being a strip of land about two miles wide and four miles in length, the buildings being situated in approximately the center of the tract. The 2000 acres under cultivation last year, produced about 17 bushels of wheat per acre or 34,000 bushels, which was sold at an average price

of 79 cents, making a gross return of about \$27,000.00. The cost of operation is about \$7000.00 leaving \$20,000.00 as net profit. The foregoing are the figures furnished by the former owner and seem to be *born* out by our own experience since the property came into our possession the first of *march*, 1911. It is but fair to state that we do not expect a large crop this year as the district has had less rainfall than at any season during the past 35 years. It is very unusual to get as low a yield as 15 bushels per acre, and during good years it runs as high as 30 bushels. The market price of blue stem wheat (which is the variety we grow) at this time, is 97 cents at Portland. The freight rate from Shuttlers which is our shipping point to Portland is 8½ cents per bushel. Shuttlers is on the Condon granch of the O. R. & N and is ten miles from the ranch, down hill haul all the way. Any other information which you desire regarding the property, kindly let us know.

149.

Letter dated Portland, Ore., April 8, 1911 to Mr. Leet, City by Oregon & Washington Trust Co. by Geo. C. Hodges.

Enclosed find the names of some people you can refer to in making your inquiries about the Columbia River Orchards Company's bonds:

Wm. F. DeGraff, Loman Bldg., Seattle, Wash.

Morrison & Eschleman, Alaska Building, Seattle, Wash.

Wm. F. Howe, Am. Bank Bldg. Seattle, Wash.

E. T. Wright, Leary Bldg., Seattle, Wash.

Mercantile Bank, Seattle, Wash.

H. P. Nolan, 117 Cherry St., Seattle, Wash.

These people all of them know what the Columbia River Orchard Company's bonds are and most of them have some of the same.

150.

United States of America,

District of Oregon,—ss.

I, C. A. Kilbourne, and I, E. C. Kilbourne, first being duly sworn say:

That I desire to make more clear that portion of my affidavit already filed in this case where on page 4 at line 19 it is stated that after our corporation practically retired from business we agreed as individuals to do some further work, and what we agreed as individuals to do was to complete the pumping plant at Wahluke, which we did, as already stated, at a cost of approximately seventeen thousand dollars (\$17,000), and as individuals we also agreed on demand to put in the additional unit referred to.

And I further say in relation to the second mortgage which has been referred to, but without admitting the validity or correctness of said mortgage, that the facts and circumstances were and are as follows:

We desired to be released from the claim on us to put in the additional unit, as we were preparing to go out of that business and felt that the manage-

ment of this land would tie up all our resources and energies. We therefore bought our release for the sum of approximately ten thousand dollars (\$10,000), which was the estimated cost of putting in the additional unit. That the only convenient or available means of making this payment to DeLarm's corporation was by raising it on this land, and this is ten thousand dollars of the second mortgage on the land. We also were very solicitous to have the Puget Sound Bridge & Dredging Company paid the seven thousand five hundred dollars (\$7,500) cash which DeLarm had agreed to pay but which he never had paid and which was in reality the debt of our corporation, and to raise this money we also were obliged to resort to the second mortgage, and these two sums make the sum total of the second mortgage, seventeen thousand five hundred dollars (\$17,500). This mortgage was made in favor of Wakefield for the reason that he was the accredited agent of Clapp and Lutz, just as Mr. Burns is of The Edinburg and Pacific Coast Mortgage Agency, Limited, and Mr. Wakefield said no money would be paid until the mortgage was on record, which is also the practice of Balfour, Guthrie & Company. Wakefield was to pay ten thousand dollars (\$10,000) of this money to DeLarm's corporation for our release, as aforesaid, but the seven thousand five hundred dollars (\$7,500) which should have come to me, C. A. Kilbourne, was never paid to me by Wakefield and I have never been able to get any explanation from

him, and at least this portion of the mortgage will be disputed by me, which is the reason I do not desire to make any statements committing me as to its validity. I myself as the maker of the mortgage expected its full return, seventeen thousand five hundred dollars (\$17,500), and I never consented to the payment of any bonus.

Referring to the showing made by our corporation before the Referee in Bankruptcy, this was long after the settlement between DeLarm and his corporation and myself concerning the land, to-wit, more than one year, and the eleven thousand dollars (\$11000) referred to in the testimony before the Referee is a balance due and owing to the Kilbourne & Clark Company and not from the Washington Orchard Irrigation and Fruit Company, as stated in the affidavit on file, but from the Columbia River Orchards Company, which is the company for which we were constructing the pumping plant. We at no time ever had anything to do with the bankrupt under consideration, the Washington Orchard Irrigation and Fruit Company. This balance of eleven thousand dollars (\$11,000) is arrived at as follows; Seven thousand five hundred dollars (\$7,500) is the sum due to the Puget Sound Bridge & Dredging Company, which should have been liquidated by DeLarm under the terms of our settlement with him; twenty-seven hundred dollars (\$2700) is the sum due the Moran Company, which also should have been liquidated by DeLarm under the same settle-

ment; and the balance, making up approximately eleven thousand dollars (\$11,000), is attorneys' fees and expenses.

(Signed) C. A. KILBOURNE.

E. C. KILBOURNE.

Subscribed and sworn to before me this 27th day of August, 1912.

ERSKINE WOOD,

(Notarial Seal)

Notary Public for Oregon.

151.

United States of America,

District of Oregon,—ss.

I, Edward C. Kilbourne, and I, Charles A. Kilbourne, being first duly sworn, say each for myself, that I am one of the respondents named in the above entitled bill of complaint; that though I have the same name as my co-defendant we are not in any way related.

That heretofore, to-wit, 1901, I, Charles A. Kilbourne, caused to be incorporated under the laws of the State of Washington with its principal office in Seattle, the Kilbourne & Clark Company, the principal business of which was as engineer and contractor for electric power and pumping plants and the sale of allied machinery. That thereafter, to-wit, 1905, I, Edward C. Kilbourne, became a stockholder in and associated with the said Kilbourne & Clark Company as electrical engineer and expert; that after said last named date the said corporation built very many pumping plants of varying capacity, in-

cluding ten pumping plants on the Columbia River. That in course of our regular business as electrical engineers and contractors W. E. DeLarm, president of the Columbia River Orchards Company, came to us, to-wit, toward the end of 1909, and represented to us that his company had an irrigation project near Wahluke, Washington, and requested us to submit plans and estimates for a pumping station in connection with said irrigation plant. This we did and subsequently entered into a contract with the Columbia River Orchards Company to act as construction contractors and engineers for said project. DeLarm was a stranger to us and as a natural business precaution we asked some evidence of credit and responsibility, and he submitted to us a statement showing assets of the said company aggregating about nine hundred thousand dollars (\$900,000), against which was a total liability of about three hundred thousand dollars (\$300,000), being a bond issue which was by him to us represented as practically as good as sold in the East. On this showing and having faith in Mr. DeLarm, we contracted with his said corporation and work was started which later had to be rushed day and night to avoid damage by reason of the rapid rise of the Columbia River.

We associated with us in this work the Puget Sound Bridge & Dredging Company, one of the largest and most responsible contracting corporations in the country. It afterward transpired that the sale of the bonds referred to was not consummated, and

after our account for the said DeLarm corporation had reached over forty-three thousand dollars (\$43,000) we stopped our work pending a settlement.

While matters were thus suspended DeLarm came to us, to-wit, February 1911, and asked the affiant, E. C. Kilbourne to go with him to Gilliam County, Oregon, to examine a ranch which he had purchased there on which he wished an opinion both as to quality of the land and particularly as to its adaptibility for irrigation. Upon DeLarm agreeing to pay all expenses, which he did, I, E. C. Kilbourne, went with DeLarm to Portland, Oregon, where one of the complainants in this suit, Mr. Tobey, met us and went with us to Olex, Gilliam, County, Oregon, where he showed DeLarm and affiant E. C. Kilbourne the property. I, E. C. Kilbourne, had no other business than as consulting engineer and I did not know then and never did know anything of the deal between DeLarm and Tobey as set up in the complaint, or otherwise. None of the details were ever discussed in my presence, I never knew the price paid, although I heard afterward that one hundred and forty thousand dollars in par value of first mortgage bonds was a part of the purchase price between DeLarm or his corporation and the Tobey's. I gave Mr. DeLarm my opinion as an engineer, which in a general way was favorable, provided he could secure water, and I, E. C. Kilbourne, then returned to my place of business in Seattle.

Afterward, to-wit, March, 1911, DeLarm again ap-

proached us and stated that he was unable to raise the cash to pay our claim, and he proposed that he turn over to us the land which I had examined in settlement and that we go ahead and complete his pumping plant on which work had been suspended. After a good deal of hesitation and protest and finding that Mr. DeLarm had no money available with which to pay us, we agreed to take this land as part settlement of our claim, but we did not at that time agree as to what allowance or value we would put upon the land in our settlement. We were unwilling to take the land and nothing else, as it would practically put us out of the contracting business and require us to switch all our capital and energies to developing this tract of land, but in accordance with our agreement to take the land subject to a subsequent appraisal or agreement of value, I, E. C. Kilbourne, again proceeded to Portland, Oregon, where the complainants in this case, the grantors, met Mr. DeLarm and at his request transferred the title to said lands by deed to me, E. C. Kilbourne. In final settlement of the matter we finally agreed to take this land in full payment and satisfaction of all our claims, providing DeLarm's corporation, the Columbia River Orchards Company, would furnish seventy-five hundred dollars (\$7500) cash, for which sum the Puget Sound Bridge & Dredging Company agreed to release their lien against the pumping plant which we had constructed together with them for the said DeLarm corporation, and also provided that the said DeLarm

corporation would assume a certain claim of the Moran Company, of Seattle, against the pumping plant in the sum of twenty-seven hundred dollars (\$2700); and we as individuals, also agreed that upon certain conditions upon demand it would within a year, if demanded, perform certain other work of the estimated cost and value of, to-wit, ten thousand dollars (\$10000), to-wit, would add another unit to the power of the pumping plant. DeLarm accepted these terms and we went on and continued the work on the pumping plant, on which we expended a further sum, of, to-wit, seventeen thousand dollars (\$17,000).

We supposed that our claim and the lien of the Puget Sound Bridge & Dredging Company were the principal demands on DeLarm's corporation for ready money, and with these out of the way by the settlement of the Puget Sound Bridge & Dredging Company's lien, as aforesaid, and by our taking the Tobey land in payment of our claim and for the further completion of the plant, we saw no reason why the Columbia River Orchards Company's enterprise at Wahluke should not be a success.

We performed every part of our part of the agreement of settlement between us and DeLarm's corporation.

I, C. A. Kilbourne, further say that to carry out the construction of the plant referred to, which we had undertaken to build for the Columbia River Orchards Company, and some other construction

work in which we were then engaged, I had advanced to the Kilbourne & Clark Company the sum of, to-wit, seventy-two thousand dollars (\$72,000), and in payment of this indebtedness the title to the said land was transferred to me, to-wit, March 25th, 1911, by E. C. Kilbourne, who had taken title from the complainants herein. I found that the said land instead of being worth seventy to eighty thousand dollars, as represented to us by DeLarm, was and is not worth more than, to-wit, fifty-five thousand dollars, and has been appraised by the Mortgage Loan Department of Balfour, Guthrie & Co., at fifty-two thousand four hundred dollars (\$52,400), and the largest loan we could get upon the property at the time we were endeavoring to place a mortgage upon it was twenty thousand dollars (\$20,000), at eight (8) per cent, which is the mortgage in question held by W. J. Burns. I further say that the said land is not under irrigation and is in the semi-arid or dry farming belt of Oregon and has produced in the past four years but one full crop, to-wit, this year's crop, and we have bought this current summer land of the same quality adjoining our land for \$10.89 an acre, and other connecting land is now offered at \$12.50 per acre.

Our own operation of this land is substantially as follows, to-wit:

Net loss from operation for the year ending March 1st, 1912.....	\$8,800.00
Cost of new equipment during the year to replace stock and equipment taken away	
By the Tobeyes	5,800.00
Approximate cost of operating and harvesting during the current year and necessary new equipment,.....	16,012.50

A total expenditure of.....\$30,612.50

The produce of the insignificant crop of last year has been taken out in making the net estimate of eight thousand eight hundred dollars (\$8,800), and the estimated returns from this year's crop, including seven hundred acres still uncut, are thirty-five thousand (35,000) bushels at seventy (70) cents a bushel, or twenty-four thousand five hundred dollars (\$24,500) exclusive of seed and feed wheat. Much of the money necessary for operation has been borrowed and will have to be repaid as soon as the crop is sold and delivered, which will require about ninety days more, together with interest due on the first mortgage, and as soon as harvest is over the entire force and further capital will be needed to get the soil in condition for fall seeding.

When the land was taken over from the Tobeyes it was not in good agricultural condition, much of it had not been plowed but only disced, and today it is being scientifically operated in a way, as already stated, requiring the expenditure of a great deal of

capital, and is in far better condition than it was when delivered by the Tobey's and, in my opinion, in far better condition than it would have been had it remained in possession of the complainants.

Affiants have endeavored to give to the Court some general idea of the actual facts, and I, E. C. Kilbourne, and I, C. A. Kilbourne now say, each for myself, that at no time was I in the confidence of either the Tobey's or DeLarm, or anyone connected with them; that I had no knowledge of DeLarm's financial condition other than as given to me by DeLarm and as in a general way I knew from my acquaintance with the Wahluke irrigation project which, as already stated, seemed to me under proper handling to have the conditions for success. On the other hand, I am informed and believe, and so state, that the complainants took several weeks in which to investigate the validity and value of the Columbia River Orchards Company bonds offered by DeLarm in payment of the land in question. I am further informed and believe, and so state, that the complainants had the advice of a skilled attorney, to whom they paid the sum of one thousand dollars for a thorough investigation of DeLarm's proposition, including not only the legal validity of the bonds but their value; and I know that Frank Tobey and William Tobey, complainants herein, spent considerable time in Seattle investigating the proposition for themselves, and though they knew that the Kilbourne & Clark Company was contractor for

the pumping plant connected with the project on which said bonds were issued, they never came near me, the affiant, or anyone connected with the Kilbourne & Clark Company regarding the matter, they never told me they were to be paid in bonds, and the present holder of the title, C. A. Kilbourne, never met either of the said Tobeys, complainants, until after the title had been vested in him; and I say that by reason of my business I have had an acquaintance in a general way with the bond market and irrigation bonds, and it is a notorious fact that the bottom dropped out of the irrigation bond market some two years ago and that many bonds on enterprises good in themselves and which under other circumstances could have been carried to success, have become practically valueless.

(Signed) EDWARD C. KILBOURNE.
CHARLES A. KILBOURNE.

Subscribed and sworn to before me this 24th day of August, 1912.

FRANK C. HESSE,
Notary Public for Oregon.

(Notarial Seal).

Defendants' Exhibits.

A.

Blue print of Washington Orchard Irrigation and Fruit Company canals, showing the sections, townships and ranges, the town of Wahluke and the divisions of sections 16 and 20 of twp. 14 N. R. 26 E.

and 35 of twp. 14 N. 25 E. into ten acre tracts.

B.

Same as A., but not as elaborate.

C.

Letter dated Tacoma, Washington, Jan. 22, 1912, to W. E. DeLarm, Seattle, by G. H. Plummer, Western Land Agent.

The proposition outlined to you on the 19th instant by Mr. Cooper, for the sale of lands owned by the Northern Pacific Railway Company, below your canal at Wahluke, has been approved and we are ready to carry out the arrangement at any time before March first. Under this arrangement we are to sell to your company all of our lands below the constructed ditch, containing approximately 3400 acres, at a price of \$45.00 per acre, on ten year contract plan; with interest at 6%. Some details of payments for deeds in less time omitted.

D.

Telegram. Dated Portland, Ore. Sept. 16, 11. J. A. Wakefield, Seattle, Wash. Good land in vicinity of Kilbourne Clark four thousand three hundred fifty acre ranch are held at twenty to twenty-five dollars per acre. W. L. Tobey.

E.

Agreement between W. E. DeLarm and W. L. Tobey, dated Feb. 25, 1911. Tobey agrees to sell 4350 acres Gilliam County ranch to DeLarm. "The agreed purchase price of the above property is as follows: \$100,000 for the real estate and \$20,000 for

tools, farming implements, live stock and other equipments and \$1250 for other supplies recently delivered on the property. - - - - -

Payment for above as follows: \$120,000. in 20 year 7% bonds of Columbia River Orchard Company of which \$3,000 are this day delivered as earnest money. - - - - -

Provision for deeds omitted. It is agreed that Tobey shall have until March 5, 1911, to investigate the above bonds, and that DeLarm will secure a loan of \$6000 for Tobey for one year at 7 per cent upon Tobey putting up as security \$2. in the bonds which he is to receive, for every \$1000 of the loan.

F.

Memorandum of agreement dated Jan. 18th, 1910 between The Columbia River Orchards Company hereafter called the Orchards Company, and the Kilbourne & Clark Company, hereinafter called the Engineer. Whereas, the Orchards Company is the owner of several thousand acres of land, situated in Grant County, Washington on the north side of the Columbia River, extending about seven miles west from Wahluke, and whereas, the orchards company is desirous of installing an electrical pumping plant, for the purpose of irrigating said land, and whereas, the Kilbourne & Clark Company are engineers, engaged in the business of designing and constructing irrigating plants; Now, therefore, it is mutually agreed as follows: The Columbia River Orchards Company hereby appoints the said Kilbourne &

Clark Company, as its engineers and purchasing agent with authority to design, purchase, and install a complete electric pumping plant for said Orchards Company on its property, situated on the Columbia River. And the said engineer—agreed to perform all the work, furnish all the apparatus and material, design and construct ready for operation, a pumping plant for said Orchards Company on their lands hereinbefore mentioned.

Description and details of pumping plant omitted.

The price to be paid shall be actual cost of all apparatus material, tools, labor, transportation and expense—with an added profit of or commission of a sum equal to ten per cent of the entire cost of said plant. The total cost of the plant including Engineer's profit shall not exceed \$40,000.00. It is agreed that the pay for the time of the individual members of said engineering company shall be calculated the time actually employed on this contract at the rate of \$15. per day for chief engineer and \$7.50 per day for assistant engineer. The engineer may sublet such portions of this contract as it may decide to be advisable in order to economize time and money. The Orchards Company agrees to pay the Engineer for said plant the sum of \$5,000 on or before March 20, 1910; and \$5,000. on April 15th, 1910; and \$5,000. on the first day of each month thereafter until fully paid.

G.

Amendment to contract of January 18, 1910.

This Agreement Witnesseth, that whereas under the terms of a certain contract of January 18, 1910, between the parties hereto it was agreed that the compensation to the Engineer, the said Kilbourne & Clark Company, in said contract, should be ten per cent of the total cost thereof;

And whereas the said Orchard Company agreed that certain payments should be made to the Engineer upon dates specified in said contract,

And whereas said payments have not been made, and by reason of the failure to receive said payments, said Engineer has been put to great expense and risk.

Now Therefore It Is Agreed, by and between the parties hereto as follows:

1. That the Columbia River Orchards Company will pay to the Kilbourne & Clark Company, as payment for said contract and work specified in said contract of January 18, 1910, the actual cost of all apparatus, material, tools, time, labor, transportation and expenses entering into the design, construction, completion operation and testing of said plant, and an added profit for commission (in lieu of the commission of 10% named in said contract of January 18, 1910; which is hereby annulled,) to said Engineer, the sum of ten thousand (10,000) Dollars, the said \$10,000 to be paid as work progresses, in payments equal to twenty-five (25%) per cent of the cost of all labor, and material, as said labor is performed and said material is purchased by said En-

gineer, and the balance on completion of the work.

2. That the clause in said contract limiting the total cost of the plant, including Engineer's profit to forty thousand (40,000) dollars shall be amended so as to limit the cost of said plant to fifty thousand (50,000) dollars.

3. That in case default shall be made in the payment of any sum or sums due the said Engineer as and when same shall be payable, the Engineer may, at its option; cease work and declare the entire amount due and payable, and it shall thereupon and thereby be entitled to payment of the entire amount of said contract price including all of said ten thousand (10,000) dollars commission, forthwith, whether the work shall be completed or not.

4. That in all other respects the contract of Jan. 18, 1910 remain in force.

H.

Agreement dated Feb. 17, 1910, between Puget Sound Bridge & Dredging Company of Seattle, Washington, party of the first part and Kilbourne & Clark Company, engineers, party of the second part.

That for and in consideration of payments hereinafter mentioned to be made by the party of the second part, the said party of the first part doth hereby covenant and agree to furnish all the materials and construct and finish in a good and workmanlike manner, in accordance with the plans and specifications attached hereto, or as amended from time to

time by said second party, the reinforced concrete pump house for the Columbia River Orchards Company, situated on the Columbia River near Wahluke, Washington.

It is mutually understood:

First. That this work shall include the complete installation of intake and discharge, including excavation therefor, and the placing of any or all machinery.

Second: That the party of the second part will deliver free at the site all pumping and electrical machinery, pipe and fittings, and shall erect such part thereof as it may elect, and that the cost of the same shall not be included in the cost of the work, on which the first party is to receive the $12\frac{1}{2}$ per cent profit. It is distinctly understood that the party of the first part assumes no risk of damage to the said machinery in handling and setting the same, but will do all its work in a workmanlike manner.

Third. The work shall be begun within ten (10) days and prosecuted with vigor; it being the intention to complete the work to deliver the water for the coming season. The party of the first part agrees to complete the work by July first 1910, but will not be held responsible for any damages sustained by reason of non-completion at this date.

In consideration of the above mentioned work the party of the second part agrees to pay the party of the first part the total cost plus $12\frac{1}{2}$ per cent for profit and plant rent. It being understood that the

total cost of work, including profit shall be paid by the party of the second part to the party of the first part on or before the 15th day of each month for all work done and material furnished during the previous month, including the $12\frac{1}{2}$ per cent profit and a final payment to be made within fifteen (15) days after completion of the work.

Such cost to include all labor and material, small tools, lost or worn out, etc., and other expenditures necessary for the proper, safe and expeditious prosecution of the work.

Provided, that the party of the second part may terminate this contract by giving five (5) days written notice paying for all materials delivered, and labor performed, together with all expenditures as noted above, plus the $12\frac{1}{2}$ per cent, up to date of cancellation of contract, and a sum equal to ten (10) per cent of the estimated cost of the uncompleted portion.

I.

Water at 190' pump with windmill
and gasoline engine.

4350 acres.

3000 acres can be irrigated.

4000 acres under cultivation.

2000 acres under wheat 1910 Ave 17 bu.

per A produced15000 sacks

$2\frac{1}{4}$ bu

34000 bu

Took 1000 sacks or 2250 bu. for seed and feed.

Rented last year 1910. Recd. for own use 7000

sacks	15000 bu @ 78c	\$11700
-------	----------------	---------

78

120

105

11700

Operating exp. last year \$6000.

Tobey's statement to me.

E. C. K.

1911 have 1400 acres seeded.

Will seed about 600 more.

In 13 years only had one poor crop.

9 horses 15 teams will do work.

23 mules Takes 6 men and cook to run it.

Foreman 75 and found.

Men .35 found.

New caterpillar engine and plows cost \$5000.

J.

Letter dated Tacoman, Wash. June 9, 1910, to Mr. E. C. Kilbourne Seattle, by G. H. Plummer, Western land agent.

“Replying to your inquiry regarding lands owned by the Railway Company underlying the Columbia River Orchards canal, I beg to say that none of our land in that vicinity is for sale at the present time, all of our holdings *bein* reserved under instructions from the Land Commissioner.

I have already submitted to him the application made by President DeLarm for the purchase of a right of way for the canal and power house site and the Land Commissioner has advised me that he prefers to leave the matter until he comes West the latter part of this month, when he will look into it further and *etermine* whether or not sale will be made.

I am returning your map herewith as requested."

K.

Letter dated Seattle, Wash. July 13, 1910, to E. C. Kilbourne by Thomas Cooper, Land Commissioner.

"Replying to yours of the thirteenth instant; I instructed Mr. Plummer a few days ago when I was in Tacoma to quote to your Company a price on the right of way at Wahluke, and you will doubtless hear from him within a day or two. The inclosure to your letter is returned herewith."

L.

Seattle, Wash., October 31st, 1910.

COLUMBIA RIVER ORCHARDS COMPANY,

to

KILBOURNE & CLARK COMPANY, Engineers.

Summary of Expenses for erecting Pumping Station at Wahluke, Wash.

Expenses Prior to Oct. 1st. 1910. Accept-

ed Sept. 27, 1910 by DeLarm,

Prest. \$43196.72

Oct. 20, Watchman's Acct. Sup-

plies for Sept. 14.75

Oct. 20, Recording Expenses —		
Green Lake Deed	1.25	
Oct. 20, Expense Paid by E. C.		
Kilbourne Sales of Equity Green Lake Add.	19.33	
Oct. 20, Cash to W. E. DeLarm.		300.00
Oct. 20, Osborne-Tremper Invoice	6.25	
Oct. 31, Columbia S. S. Co.	9.25	
" B. J. Montgomery "Drayage Acct."	8.50	
" Int. on note—Oct. 21st..	19.00	
" Recording Deed to E. C. Kilbourne	1.25	
" Invoice Curtis Mfg. Co., Frt.	14.90	
" Invoice Moran Co., Int. Overdue Acct.	14.02	
" Invoice Crane Co., Int. Overdue Acct.	2.58	111.08
" Engineer's Percentage per contract, (25 per cent added to Total Cost)	111.08	27.77
		<hr/>
		\$43635.57
Oct. 19, Credit Memo (Drayage Acct)	11.00	
" Credit Memo (Watchman' Supplies)	11.40	

" Credit Memo (Watch-		
man' salary Sept)		70.00
Oct. 25, Cash	Proceeds—Equity	
	Deed, Green Lake Add..	1000.00
Oct. 27, Cash	W. E. DeLarm . . .	100.00
Oct. 28, Cash	W. E. DeLarm . . .	100.00
		1292.40

Balance due Kilbourne & Clark Co. \$42343.17

Seattle, Wash., Feby. 28, 1911.

COLUMBIA RIVER ORCHARDS COMPANY,
to

KILBOURNE & CLARK COMPANY, Engineers.

Summary of Expense for erecting Pumping Station at Wahluke, Wash.

Expenses Prior to Nov. 1st. 1910 \$42343.17

Nov. 1, Osborne Tremper & Co.

Inv. 10-31 6.25

Nov. 16, McClure & McClure In-

voice 35.00

Nov. 30, Abstract on Tacoma

property 8.25

Dec. 31, Chas. A. Beil, Inv. 12-31 8.40

1911

Jany. 31, State Bank Sumner, In-

terest 50.00

Jany. 31, Recording Deed 1.60

Feby. 28, State Bank Sumner, In-

terest 30.00

Feby. 28, Mary E. Billings, In-

insurance	11.00
-----------------	-------

150.50

\$42,493.67

1910

Dec. 27, Cash	350.00
---------------------	--------

\$42143.67

(Pencil)

Interest not included in above ECK.

M.

Same as Plaintiffs' Exhibit 135 with the following additions:

Certified correct per records, M. A. McKercher, Auditor. Accounting accepted O. K. The Columbia River Orchards Co. by W. E. DeLarm, Pr. Sept. 27th, 1910.

N.

Letter dated May 23, 1911 to Mr. C. M. Glover, Rock Creek, Oregon, by E. C. Kilbourne.

"Your letter of the 19th received; Will you please send a legal description of the land so that we may see where it lays, also state the improvements that are on the place, what stock and machinery goes with it. We are not in shape to buy the land at present but the parties from whom we bought the Tobey Bros. ranch are anxious to get *another* farm on similar terms, therefore if you will write giving me a complete description and inventory as near as pos-

sible we will put it up to the party.

Give the number of acres in Spring and Winter wheat and the kind of wheat that is planted."

O.

Blue prints, showing in detail the plans of the pumping plant and machinery. These Blue prints show a very elaborate and substantial plant fully equipped with all necessary machinery to make a good, substantial and complete pumping plant for the irrigation system, complete in every detail.

P.

Letter dated February 17, 1911, to Pacific Power & Light Co., Portland, Oregon, by Columbia River Orchard Company by W. E. DeLarm, Pres.

"As requested by your Mr. H. S. Wells, we beg to submit the following brief summary of what our company is doing at Wahluke, for which we have this day made a contract with your company for power.

The initial project of our company covers an area of approximately 15,000 acres, lying at two levels, namely; 60 and 115 feet above the Columbia River; of it, about 5,500 acres belong to the N. P. Railway Company and the balance to individual settler, mostly of the latter.

Our company have either mortgages to secure payments for water agreements for furnishing water either now executed or in process of being closed. Lying directly back of the 15,000 acres is another level of approximately 35,000 acres, all of which can be irrigated from our pumping plant.

It is incorporated under the general scheme of the company and for which we have this day contracted for power.

The Company is the owner of approximately 1200 acres of land which they are selling for \$350. per acre including water right and of which there has been sold approximately \$300,000.

Payment for this is made in not less than 20 per cent down and balance in five equal payments.

The Company have already constructed a solid concrete pump house which cost \$49,000 and is now completed. Machinery is procured and will soon be installed.

About fifteen miles of Ditch work has about been completed and there is now about one hundred horses and the necessary quota of men at work on the Ditch.

By May 1st the main Canal will be completed to cover from five to seven thousand acres of land. The present plan for this year contemplates putting the water on only 2,000 acres as this is all the land which will be prepared for cultivation. Additional land will go as fast as users can be secured for water."

Q.

Financial statement Columbia River Orchard Company dated Jan. 27, 1911, and signed by the Company by W. E. DeLarm, Pres. and A. J. Biehl, Secy.

"The Columbia River Orchard Company is a Washington corporation with a capital stock of \$100,000.00 which has been fully paid in mortgages on farms, and the stock is now owned and held by the

Washington Orchard Irrigation and Fruit Company. The Company is essentially a holding company and incurs no liabilities other than the issuance of bonds.

There has been authorized a bond issue which is progressive and is limited in amount to securities amounting to 125 per cent for every \$100 of bonds issued. At present there has *bee* \$74,000.00 of bonds issued.

ASSETS—

Mortgages	\$100,000.00	
Securities	59,000.00	\$159,000.00

LIABILITIES—

Bonds Issued	74,000.00	
Accrued Interest	1,180.00	
Taxes	17.50	75,197.50

Surplus	\$83,802.50
---------------	-------------

The mortgages mentioned above are on farm land at \$100.00 per acre, which land is selling for \$350.00 per acre and there are no other mortgages on the above property. In addition to the above security the principal and interest on the bonds of this company is guaranteed by the Washington Orchard Irrigation and Fruit Company.”

R.

A printed pamphlet put out by Columbia River Orchards Co. entitled “Modern Alchemy,” illustrations of individual experiences in farm profits, etc.

Also, discusses in detail "Financial View Point," "Soil," "Climate," "Crops," Impossibility of overproduction, markets, irrigation, Irrigation vs. Rainfall, Scientific Farming, Turning the Desert into a Garden, and applies the same to the Company's project at Wahluke and then discusses in detail as to the Wahluke project, location and lay of land, sheltered situation, free from insects and pests, transportation, improvement and development. Pumping Plant, Domestic Water, Electric Light, Fuel, Roads, Water Right, Clearing and Leveling. Developments and Cost, Rapid Increase in value.

The book also contains many pictures of growing crops on irrigated lands, which, however, do not purport to be at Wahluke, showing crops of fruit, hay, grain, irrigating ditches, orchards, cattle, railroads, bridges, steamboats, etc. The whole book being a very flattering and picturesque presentation of the possibilities of the Wahluke project and making it appear very attractive to the investor and home-seeker.

S.

Another pamphlet similar to Ex. R. but not so elaborate.

T.

Statement of Cost of Completing Wahluke project. Payments by E. C. and C. A. Kilbourne ac. Columbia River Orchards Co.

Contract.

1911

Apr. 6, J. W. Springston ac.		
Pipe cont. Pd. by C. A.		
K. personal check	300.00	
Ck to K & C Co. ac.		
Sund bills Pd. by C. A.		
K. personal check . . .	317.62	
Apr. 10, cash for pay roll acct		
Pd by C. A. K. personal		
check	500.00	
Apr. 11, Cash to Livingston ac.		
trip Wahluke C. A.		
K. personal check for		
cash	50.00	
Draft to Livingston ac.		
Pay, 250 Ex. 75c C. A.		
K. Telegraphic exchg	250.75	
K & C Co ac. Sundry		
bills pd. CAK ck. to		
N. P. Ry. for frt. . . .	136.82	
Apr. 19, Adair & Son, Rumsey		
pump & carburetor		
CAK ck.	130.09	Deductions
Apr. 22, DeLaval Steam Tur-		
bine Co $\frac{1}{2}$ Kilbourne		
Co. Ck.	1748.70	1600.00
General Electric Co.		
bal Kilbourne Co. ck.	650.00	650.00
General Electric Co.		
Int. & Storage 3 checks	120.00	

Apr. 24,	Deposit 1st Natl Bk.	
	Pasco ac pay rolls 3	
	checks	250.00
	K & C Co. ac. sund bills	
	3 checks 200. 131.45..	331.45
Apr. 21,	Seattle Natl. Bk. Dft.	
	CAK ck.	281.94
Apr. 28,	Alaska Junk Co. pipe,	
	tools, etc. K. Co. ck. ..	129.89
	Columbia Steamboat	
	Co. ac. frt. K. Co. ck.	432.00
May 4,	National Grocery Co.	
	ac. Klob & Son Camp	
	sup. K. Co. ck.	154.08
	Cash Acct. P. R. &	
	Exp. K. Co. ck. to K &	
	C. Co.	500.00
May 10,	Deposit Pasco Bank ac.	
	P. R. K Co. ck.	1250.00
May 20,	Deposit Pasco Bank ac.	
	P. R. K. Co. ck.	1000.00
May 22,	J. W. Springston ac	
	frt. mtl K. Co. Ck. 81	
	CK 100 in cash 5-4 ...	181.00
May 24,	John Burns K. C. ck...	2.00
	Hoskins Machine Wks	
	K. Co. ck.	49.53
	Columbia Steamboat	
	Co. K. Co. Ck	77.39
May 27,	Pasco Bank ac. Living-	

	ston & Expense	200.00
June 5,	Natl. Grocery Co.	0000.
	Richmond L. Sacks, (K. Co. Ck.)	5.75
	D. Chambers (K. Co. Ck.)	16.12
	H. H. Haven, horse hire (K. Co. Ck.) . . .	5.95
	G. Jaadden, ferry man (K. Co. Ck.)	8.50
	Ashbaugh & Co. Ken- newick (K. Co. Ck.) . .	60.00
	F. C. Koppen, Wah- luke groceries K. Co. Ck.	169.90
	Kennewick Hardware Co. (K. Co. Ck.) . . .	63.00
June 8,	J. D. Montgomery, team (K. Co. Ck.) . . .	6.90
	Co-operative Orchard Co. Distalate potatoes, etc. (K. Co. Ck.) . . .	67.33
June 22,	Columbia Steamboat Co. frt. (K. Co. Ck.) .	126.15
June 23,	Standard Oil Co. gas- olene (K. Co. Ck.) . . .	88.20
June 29,	Dep. Pasco Bank ac. P. R. & Expense K. Co. Ck.)	1069.80
July 3,	J. H. Fox, camp sup-	

	plies (K. Co. Ck.) ...	62.20	
	National Grocery Co.		
	ac. Klob K. co. ck. ...	111.55	
July 27,	P. S. Bdge & Ddg Co.		
	ac. Int. & Atty fees..	2500.00	
	E. C & C A K Ck		1500.00
July 15,	Use of Gas. Engine & pumping outfit Jour- nal entry	150.00	
	Bot. of Herr Eng Co.		
	600.00 & pump		
July 18,	1st Nat. Bk. Pasco 3 dks. (ck. Kil. Co) ...	13.50	
	J. Schwartz Labor. watchman 70 cash		
	39.10 ck.	109.10	
Aug. 4,	F. C. Koppen, ac gro- ceries ck. Kil. Co.	200.00	
	St. Paul & Tacoma Lumber Co. Kenne- wick, Cil. Co. Ck. ...	187.14	
	DeLaval Turbine Co. Int. Storage & frt. (K & C. Checks)	235.67	
	Kennewick Produce Co. (K. Co. Ck.)	6.90	
Aug. 23,	National Grocery Co. on ac. Kolb (K. Co. Ck.)	100.00	
	Jay Locks 2000 sacks		

	for coffer dam 3 cks.	
	50, 25, 25,	100.00
Aug. 31,	Gray & Barash Elec- trical work, letter . . .	175.00
	Woodhouse & Platt pd 4-18 Pd. by E C & CAK ck	26.00
	K & C. Co., for sundry bills K. Co. ck.	500.00
	Switch board & Instru- ments complete K & C Mfg. Co. acct offset . .	420.00
	K C Mnfg Co. Motor & primer Pr. by E S & CAK in rent	250.00
Oct. 25,	Mrs. J. W. Springston ac. Pipe contract (E. C. & C. A. K.)	272.56
Oct. 27,	Kennewick Hdw. Co. (check missing)	126.70
	Kennewick Packing Co. (should be 168.91)	118.00
Nov. 16,	S. P. & Tac. Lbr. Co. on ac. (E C & CAK) . .	50.00
Nov. 20,	Shonet & McLaren (EC & CAK)	50.00
Nov. 30,	J. W. Shepard bal. (Cert. Ck.)	239.70
Nov. 30,	7-7 A. Hambach Co (K & C Check)	146.17

	Hydraulic Supply Co	
	(K & C)	50.00
	Salary and Exp. of	
	Managing Engineer	
	(K & C ck pd. 5-22-12)	1000.00
Nov. 23,	P. C. Leonard Lumber	
	Co. ac. Springston	
	(CAK per ck)	537.05
Dec. 10,	P. C. Leonard Lumber	
	Co. balance (Ck 100.45,	
	330 bal ck. missing) ..	430.00
1912		
January	Springston note acct.	
	pipe cont.	225.00
	29, (EC & CAK Ck.) Int .	4.70
Feb. 5,	Sampson Iron Wks (Dft.	
	Natl. Bk. Com)	78.69
	St. P & Tac. Lbr. Co.	
	bal (See Invoice	162.00
Feb. 12,	Standard Oil Co. (50	
	ck. missing, 62.45 ck.	
	No.531, 2 cks)	112.45
	A. C. Weaver Asst.	
	Eng. bal. saly (K & C)	70.50
Sept. 3-12,	Springston note bal	
	ac. (131 pd by EC &	
	CAK, 101.65 by M. L.	
	Co)	231.65
		<hr/>
		19788.89

Less deduction acct K & C. Co.

items	3750.00
-------------	---------

Add for overhead exp. & 16038.89

profit 10 per cent ...	1603.88
------------------------	---------

\$17642.77

E & O. E.

U.

Bundle of checks showing payments by checks as
noted in Ex. T.

V.

THE KILBOURNE RANCH.

EARNINGS AND EXPENSES FOR TWO
YEARS ENDING MARCH 1, 1913.

Receipts—

	March 1, 1912	March 1, 1913
From sales of grain	3,516.84	27,913.23
From grain remaining on hand.		1,289.90
Feed and seed remaining on hand		339.30

Ledger totals	3,516.84	29,551.43
---------------------	----------	-----------

Expenses—

Wages paid	3,972.48	9,832.26
commissary supplies	1,535.76	667.72
Fuel oil for traction engine	599.00	2,058.16
Lubricating Oil	496.59	861.23
Seed and Feed bought	615.91	144.45
Grain sacks	333.35	2,272.30

Building and general repairs . . .	47.16	347.51
Machy & Implement repairs . . .	1,006.36	1,891.70
Engine Repairs	1,612.59	2,175.06
Miscellaneous expenses	1,129.92	1,421.42
Taxes & Insurance	70.00	676.49
Interest	1,329.33	3,578.11

Total expenses as per ledger . . .	12,748.45	25,926.41
------------------------------------	-----------	-----------

Add Depreciation

Building 5 per cent

Engines 15 per cent	1,806.70	2,538.92
-------------------------------	----------	----------

Other machy & Implements

12½ per cent, Livestock 8 per

cent

	14,555.15	28,465.33
--	-----------	-----------

DEDUCTIONS—

To arrive at cost of operation of
original Tobey Bros. ranch,
deduct the following items:

Interest)not necessarily	1,329.33	3,778.11
-------------------------------------	----------	----------

Misc. Expenses a part of (part)

operation expense	600.00	1,000.00
-----------------------------	--------	----------

Plowing and cultivating lands

other than the Tobey included

in above exp. 1913.		3,325.80
-----------------------------	--	----------

Total deductions	1,929.33	8,103.91
----------------------------	----------	----------

Actual cost Tobey land only . . .	12,625.82	20,361.42
-----------------------------------	-----------	-----------

Loss 1912; profit 1913	9,108.98	9,190.01
----------------------------------	----------	----------

	12,625.82	29,551.43
--	-----------	-----------

Added to equipment during two years.

Buildings constructed	2,243.82
Traction Engines	4,279.97
Machy and implements	1,775.00
Livestock purchased	5,028.31

Total	13,327.10
-------------	-----------

	Year	Year
	1911	1912
No. acres in grain	1900	3000
(Produced)	10200	47000
No. Bushels produced.....		
(Sold)	4688	42000
Average yield per acre	51¼	15 2-5
Average price per bushel	74½	70
Cost to produce per bushel	2.90	48½
Cost of operation per acre in crop	6.64	6.78
Gross income per acre in crop ..	1.83	9.85
Gross income per acre entire		
ranch80	6.80
Net gain for year ending 3-1-13		\$9,190.01
Net loss for year ending 3-1-13.....		9,108.98

Net profits for 2 years of 81.02 on an investment of about \$75,000.

W.

Seattle, Washington, January 25, 1912.

The Columbia River Orchard Company,

Seattle, Washington.

Gentlemen:

Upon the payment to us within ninety (90) days from this date of the sum of seventy-five hundred dollars (\$7500) with interest thereon at the rate of six per cent per annum from September 19, 1911, together with costs in a certain action now pending in Grant County, State of Washington, in which Puget Sound Bridge & Dredging Company is plaintiff and Kilbourne & *Blark* Company and the Columbia River Orchard Company are defendants, which costs are to include an attorney's fee in the sum of one thousand dollars (\$1,000), and also the further payment of the sum of twenty-seven hundred dollars (\$2700), all to be paid in cash, we hereby agree to satisfy and have cancelled of record that certain lien, suit for the foreclosure of which is now pending in said Grant County in the case hereinbefore referred to, and we also agree to pay off and have cancelled of record the note and mortgage given to the Moran Company by us, on the Johnson property in Tacoma, and to cause to have deeded to the Columbia River Orchard Company, or its assigns, both the said Johnson property and the Billings property, subject to the mortgages on said property at the time we acquired the same, together with interest, taxes and insurance now due or accrued. It is agreed that the performance of the

above agreements will settle all matters in full between us. Accepted Jan. 25, 1912.

THE KILBOURNE & CLARK COMPANY,

By E. C. K.

January 25, 1912.

Kilbourne & Clark Company,

Seattle, Washington.

Gentlemen:

Pursuant to agreement and understanding reached this day in the matter of the case of Puget Sound Bridge & Dredging Company vs. Columbia River Orchard Company and Kilbourne & Clark Company, pending in Grant County, Washington, the Puget Sound Bridge & Dredging Company agrees that on receipt from you at any time within ninety (90) days from this date of the sum of seventy-five hundred dollars (\$7,500) in cash, together with interest thereon at the rate of six per cent from the 19th day of September, 1911, together with the costs of said suit, including an attorney's fee in the sum of one thousand dollars (\$1,000), the Puget Sound Bridge & Dredging Company will assign to you its lien filed in the cause, together with any judgment rendered and entered thereon and all its rights therein.

Yours very truly

PUGET SOUND BRIDGE & DREDGING COMPANY,

By R. M. Dyer, *Vic* President.

George L. Spirk, Secretary.

Approved Nov. 4, 1914.

R. S. BEAN, Judge.

And Afterwards, to wit, on the 2 day of October, 1914, there was duly filed in said Court and cause a praecipe, in words and figures as follows, to wit:

[This Proecipe]

*In the District Court of the United States for the
District of Oregon.*

FRANK L. TOBEY and RETTA M. TOBEY, his
wife, AUGUSTA M. TOBEY, and WILLIAM L.
TOBEY,

Complainants,

vs.

W. E. DeLARM, EDWARD C. KILBOURNE,
CHARLES A. KILBOURNE, J. ALEXANDER
WAKEFIELD, CYRUS F. CLAPP, H. E.
LUTZ, W. J. BURNS, The EDINBURG and PA-
CIFIC COAST MORTGAGE AGENCY, LIM-
ITED, COLUMBIA RIVER ORCHARD COM-
PANY, a corporation, OREGON-WASHING-
TON TRUST COMPANY, of Portland, Oregon,
Trustee, a corporation, and the WASHINGTON
ORCHARD IRRIGATION AND FRUIT COM-
PANY, a corporation,

Defendants.

To G. H. Marsh, Clerk of the District Court of the
United States for the District of Oregon:

You are hereby directed to incorporate the follow-
ing named documents in the record on appeal in the
above entitled cause:

1. Bill of Complaint.
2. Appearance of attorneys for said defendants

Edward C. Kilbourne and Charles A. Kilbourne.

3. Amended answer of said Edward C. Kilbourne and Charles A. Kilbourne.

4. Final decree.

5. Memorandum on the merits. Opinion.

6. Petition for allowance of appeal.

7. Order allowing appeal.

8. Assignment of error.

9. Notice of appeal, with acknowledgment of service thereon.

10. Abstract of evidence.

11. This praecipe.

12. Undertaking on appeal.

Respectfully submitted,
WOODCOCK, SMITH & BRYSON,
WILLIAMS & BEAN,

Attorneys for Appellants.